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Elizabeth A. Brown
Clerk of Supreme Court

7
8 SUPREME COURT
9 STATE OF NEVADA

10 RONALD J. ROBINSON,
11 Appellant,

No. 83250

12 vs.

APPELLANT'S APPENDIX VOL. 4

13 STEVEN A. HOTCHKISS,
14
15 Respondent.

16 RONALD J. ROBINSON,
17 Appellant,
18

19 vs.

20 ANTHONY WHITE, ROBIN
SUNTHEIMER, TROY
21 SUNTHEIMER, STEPHENS
GHESQUIERE, JACKIE STONE,
22 GAYLE CHANY, KENDALL
SMITH, GABRIELE
23 LA VERMICOCCA, ROBERT
KAISER.

24
25 Respondents.
26
27
28

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04/01/21	Recorder's Transcript of Bench Trial - Day 1, 02/24/20	4	APP000546 APP000726

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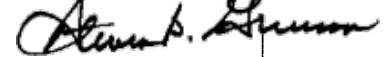
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7 Attorney for Plaintiffs

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 IN THE MATTER BETWEEN

11 Steven A. Hotchkiss,

12 PLAINTIFF,

13 v.

14 Ronald J. Robinson, Vernon Rodriguez, Frank
15 Yoder, Alisa Davis and DOES 1-10 and ROES 1-
16 10, inclusively

17 DEFENDANTS

18 Anthony White, Robin Suntheimer, Troy
19 Suntheimer, Stephens Ghesquiere, Jackie Stone,
20 Gayle Chany, Kendall Smith, Gabriele
21 Lavermicocca and Robert Kaiser,

22 PLAINTIFFS

23 v

24 Ronald J. Robinson, Vernon Rodriguez, Virtual
25 Communications Corporation, Frank Yoder, Alisa
26 Davis and DOES 1-10 and ROES 1-10, inclusively

) Case No. A-17-762264-C

) Dept.: 8

) NOTICE OF DELEGATION OF
) RIGHTS

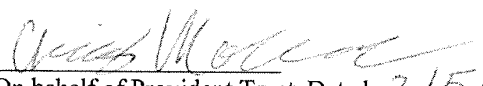
) CONSOLIDATED WITH

) Case No. A-17-763003-C

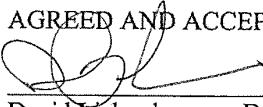
27 TO THE COURT, THE PARTIES AND ALL INTERESTED PERSONS. PLEASE TAKE
28 NOTICE that Provident Trust Group hereby delegates whatever rights it has to pursue this

1 litigation on behalf of Steven A. Hotchkiss, Anthony White, Troy Suntheimer, Stephens
2 Ghesquiere, Jackie Stone, Gayle Chany, Kendall Smith, Gabriele Lavermicocca and Robert
3 Kaiser ("Plaintiffs") to Plaintiffs, to be pursued by their attorney David Liebrader in the
4 present action.

5 Provident Trust Group serves as a self-directed IRA Custodian for Plaintiffs (with the
6 exception of Robin Suntheimer), and denies it has any obligation to prosecute any claim on
7 behalf of Plaintiffs. To the extent any rights do exist, Provident Trust hereby delegates those
8 rights to Plaintiffs, to be prosecuted by their attorney.

9 
10 On behalf of Provident Trust Dated: 2/5/2020

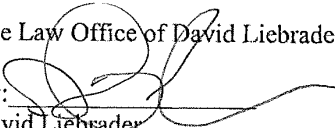
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12 AGREED AND ACCEPTED:

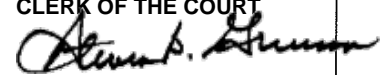
13 
14 David Liebrader Dated: 2.6.20
On behalf of Plaintiffs

15
16 Dated: January 29, 2019 ²⁰²⁰ (70)

Respectfully submitted,

17
18 The Law Office of David Liebrader, Inc.

19 By: 
20 David Liebrader
Attorney for Plaintiffs



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DISTRICT COURT
CLARK COUNTY, NEVADA

IN THE MATTER BETWEEN)	Case No. A-17-762264-C
)	
Steven A. Hotchkiss,)	Dept.: 8
)	
PLAINTIFF,)	OPPOSITION TO
)	DEFENDANT'S PRE TRIAL
v.)	BRIEF
)	
Ronald J. Robinson, Vernon Rodriguez, Frank)	
Yoder, Alisa Davis and DOES 1-10 and ROES 1-)	
10, inclusively)	
)	
DEFENDANTS)	CONSOLIDATED WITH
)	
Anthony White, Robin Suntheimer, Troy)	Case No. A-17-763003-C
Suntheimer, Stephens Ghesquiere, Jackie Stone,)	
Gayle Chany, Kendall Smith, Gabriele)	
Lavermicocca and Robert Kaiser)	
)	
PLAINTIFFS)	
)	
v.)	
)	
Ronald J. Robinson, Vernon Rodriguez, Virtual)	
Communications Corporation, Frank Yoder, Alisa)	
Davis and DOES 1-10 and ROES 1-10, inclusively)	
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OPPOSITION

Defendant belatedly filed a motion dismiss and a motion in limine disguised as

1 a pretrial brief, despite the fact that the deadlines to file motions to dismiss and
2 motions in limine passed on February 8, 2019 and January 10, 2020, respectively. In
3 light of this, the Court should refuse to entertain any of the arguments raised. It
4 should be noted that Plaintiffs attempted to file a joint pretrial memo, and sent a
5 proposed JPTM to Defendants' counsel on January 15, 2020. Defendants did not
6 respond, forcing Plaintiff to file an individual pretrial memo on January 21, 2020.
7 Defendants then followed up six days later with their own pretrial memo, which was a
8 transparently tactical move to advance arguments that were barred by the deadlines
9 set in the JCCR and pretrial orders.

10 Plaintiffs address the issues raised by Defendants in their brief

11 **1. Failure to Name an Indispensable Party**

12 Defendants claim that Plaintiffs self-directed IRA Custodian Provident Trust
13 ("Provident") is the real party in interest, and that because Provident did not file the
14 lawsuit on behalf of Plaintiffs, or was not joined in the lawsuit the case cannot
15 proceed. This is incorrect. Per contract, Provident has no obligation to advance
16 claims on behalf of Plaintiffs. In addition, Provident has delegated any rights it has to
17 pursue this claim to the Plaintiffs. See Exhibit "A", attached. For that reason alone,
18 the Court can deny the motion to dismiss.

19 The document that governs the relationship between Plaintiff and Provident Trust
20 Group is the "Custodial Agreement." The services Provident is contractually obligated
21 to provide are set forth in this written agreement. Among other provisions, the
22 agreement provides that Provident Trust Group is an IRA Custodian, not a Trustee,
23 and that as a Custodian, is not under any obligation to sue on behalf of its clients.
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1 “We are under no obligation or duty to investigate, analyze, monitor, verify
2 title to, or otherwise evaluate or perform due diligence for any investment
3 directed by you or your investment advisor, representative or agent; **nor are**
4 **we responsible to notify you or take any action should there be any**
5 **default** or other obligation with regard to any investment.”

6 (Emphasis added.) See Exhibit “B”, page 4/13 attached.

7 The issue of the IRA Custodian as real party in interest has been asserted
8 unsuccessfully as a defense in several recent cases, most notably in a Utah District
9 Court case (Deem v. Baron) in 2016. There, the court cited two recent federal court
10 decisions that held that an IRA Custodian was not a real party in interest

11 “In the case before the court, the actual agreement between Plaintiff David
12 Law, and the custodian, American Pension Services, clearly states that the
13 owner, David Law, not the custodian, has sole responsibility for decisions. The
14 custodian was to have “no responsibility.” Following the logic of the *Vannest*
15 case and the *FBO David Sweet IRA* case, which this court finds compelling, the
16 Plaintiffs, not the holder or custodian of the IRA are the true parties in
interest. Since the custodian/holder has not been involved in the decision-
making process, it lacks the knowledge of the facts which would allow it to
bring this action.”

17 Deem v. Baron (D. Utah 2016) 2:15-CV-00755-DS (See Exhibit “C” attached.)

18 The facts here are identical; Provident Trust acting as 1) “Custodian” was the
19 2) “Holder” of the 3) “Note”, and 4) “was not involved in the decision-making process”
20 on the investment.

21 Defendants base their whole argument in the mistaken (and unsupported)
22 premise that Provident Trust was acting in a Trustee capacity over Trust funds. This
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1 argument is demolished by the actual written agreement between Plaintiffs and
2 Provident where the parties acknowledge a Custodian relationship.

3 In fact, there is nothing in the custodial agreement that mentions any Trustee
4 like obligations. To the contrary, the parties, in plain language, agreed that it was
5 Plaintiff who would be responsible for taking legal action, and not Provident Trust.

6 Here, Plaintiffs did NOT manifest an intent to create a Trust. What they did
7 manifest was an intent to create a self-directed IRA custodial account whereby they
8 were responsible for selecting the investments, and for taking action in the event of a
9 default.

10 From the first page the relationship is defined as a Custodial relationship, not
11 a Trustee relationship, and Defendants cannot point to a single reference to a Trustee
12 relationship in the agreement.

13 What Defendants are asking the court to do is to rewrite the contract and force
14 Provident Trust to take on the role of a Trustee. Plaintiff's Promissory Notes plainly
15 states that Provident Trust Group is **the Holder** of the Note, and contrary to
16 Defendants' unsupported allegations, was not acting in the capacity of a Trustee. The
17 Note bears Plaintiffs' initials on each page, and their signatures on page three. Next
18 to Plaintiffs' signatures, is a stamped signature from Provident Trust where the CEO
19 signed off as **a consultant**, and not as a Trustee.

20 Defendants tried this same argument in a previously decided case here in the
21 EJDC. That case Reva Waldo v. Ronald Robinson, case A-15-725256-C ("the Waldo
22 case") was decided by Judge Williams in 2018. After extensive briefing by the parties
23 many months prior to trial, Judge Williams denied the motion and issued the
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1 following Order: (See Exhibit “D”, attached)

- 2 1. Defendants' motion to dismiss for failure to name an indispensable party,
3 specifically Provident Trust Group was the subject of extensive briefing. In
4 addition to the motion, opposition and reply the court also asked for and
5 received supplemental briefing from the parties, as well as out of jurisdiction
6 authorities lodged with the court by Plaintiff.

7 The issue of whether a self-directed IRA Custodian is a necessary party such
8 that the Plaintiff lacks standing to sue is an issue of first impression in Nevada.

9 Based upon the filings the Court finds that Provident Trust owed limited
10 duties to Plaintiff and did not direct, consent, approve or disapprove of
11 Plaintiff's investment decisions in the self-directed account. Instead, it was
12 Plaintiff, the owner of the Provident Trust Group custodial account who
13 managed, directed and controlled the investments. See FBO David Sweet IRA
14 v. Taylor, 4 F. Supp. 3d 1282 (E.D. Ala. 2014). Because Plaintiff was the sole
15 decision maker on the account, and Provident Trust Group expressly, by
16 contract, declined to undertake any action to pursue remedies for default on
17 the investment, the Court finds that Provident Trust Group is not a necessary
18 or indispensable party and, on that basis, DENIES Defendant's motion.

19 (See Exhibit “D”, attached)

20 Having the final word on this argument is Provident itself which has delegated
21 whatever rights it has to pursue this matter to Plaintiffs. The issue of whether
22 Plaintiff has standing to assert her claim is moot. As a result, Plaintiffs are properly
23 before this Court seeking their remedies.

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1 that one of Defendant's own officers performed an audit and found that Mr. Robinson
2 misappropriated money.

3 For these reasons, and because this is a bench trial with no chance of a jury being
4 improperly swayed by emotion, the testimony should be heard.

5 **4. Discharge of Mr. Robinson for his Personal Guarantee**

6 Mr. Robinson argues that his personal guarantee was extinguished by the VCC
7 Bankruptcy discharge. He made this same argument in the Waldo case, where Judge
8 Williams denied it, and permitted the case to proceed to Judgment. The Court should
9 do the same here.

10 Robinson claims that VCC's bankruptcy discharge releases him from liability
11 as a guarantor. This is legally incorrect. The general rule is that a discharge of the
12 debtor does not affect the liability of another entity for the discharged debt. See 4-
13 524 Collier on Bankruptcy p 524.05.

14 And, from the bankruptcy Code:

15 Except as provided in subsection (a)(3) of this section, discharge of a debt of
16 the debtor does not affect the liability of any other entity on, or the property of
17 any other entity for, such debt.

18 11 USC 524(e)

19 The filing of a bankruptcy petition prevents temporarily the litigation of
20 prepetition claims against a debtor. See 11 U.S.C. § 362(a)(1). The entry of a discharge
21 acts as a permanent injunction against litigation for the purpose of collecting a debt
22 from the debtor or the debtor's property. 11 U.S.C. § 727(b). "A discharge in
23 bankruptcy does not extinguish the debt itself, but merely releases the debtor from
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1 personal liability for the debt." In re Edgeworth, 993 F.2d 51, 53 (5th Cir. 1993).
2 Following the discharge, section 524(a)(2) enjoins "actions against a debtor," Owaski
3 v. Jet Florida Sys., Inc. (In re Jet Florida Sys., Inc.), 883 F.2d 970, 972 (11th Cir.
4 1989), but section 524(e) "specifies that the debt still exists and can be collected from
5 any other entity that might be liable." In re Edgeworth, 993 F.2d at 53; see also In re
6 Jet Florida, 883 F.2d at 973 ("However, a discharge will not act to enjoin a creditor
7 from taking action against another who also might be liable to the creditor.").

8 Therefore, a creditor may establish the debtor's nominal liability for a claim
9 solely for the purpose of collecting the debt from a third party, such as an insurer or
10 guarantor. Id.; see also In re Walker, 927 F.2d 1138, 1142 (10th Cir. 1991) ("It is well
11 established that this provision permits a creditor to bring or continue an action
12 directly against the debtor for the purpose of establishing the debtor's liability when,
13 as here, establishment of that liability is a prerequisite to recovery from another
14 entity."); In re Hendrix, 986 F.2d 195 (7th Cir. 1993) (citing In re Shondel, 950 F.2d
15 1301 (7th Cir.1991)); In re Doar, 234 B.R. 203, 207 (Bankr. N.D. Ga. 1999) (Kahn, J.).

16
17 As to the effect a bankruptcy filing has on guarantors *vis a vis* the automatic
18 stay, the result is the same:

19 Although the scope of the automatic stay is broad, the clear language of section
20 362(a) stays actions only against a "debtor." Assoc. of St. Croix Condominium Owners
21 v. St. Croix Hotel Corp., 682 F.2d 446, 448 (3d Cir.1982). As a consequence, "[i]t is
22 universally acknowledged that an automatic stay of proceedings accorded by §362
23 may not be invoked by entities such as sureties, guarantors, co-obligors, or others
24
25
26

1 with a similar legal or factual nexus to the debtor.” Lynch v. Johns-Manville Sales
2 Corp., 710 F.2d 1194, 1196-97 (6th Cir.1983); see also United States v. Dos Cabezas
3 Corp., 995 F.2d 1486, 1491-93 (9th Cir.1993) (holding that stay does not preclude
4 government from pursuing deficiency judgment against nondebtor cosigners of
5 promissory note); Croyden Associates v. Alleco, Inc., 969 F.2d 675, 677 (8th
6 Cir.1992) (refusing to extend stay to claims against solvent codefendants), Credit
7 Alliance Corp. v. Williams, 851 F.2d 119, 121-22 (4th Cir.1988) (enforcing a default
8 judgment entered against a nondebtor guarantor of a note during the pendency of the
9 corporate obligor's bankruptcy).

10 The sole Nevada case cited in support, Marion Properties (cites infra) is not
11 on point, and is easily distinguished. In that case a creditor voluntarily dismissed
12 claims against the debtor with prejudice, then later tried to sue the guarantor. The
13 court found that in voluntarily dismissing the debtor, the claim against the guarantor
14 was extinguished.

15 “An attorney for Americana's bankruptcy trustee and Marion's attorney
16 entered into a stipulation in which Marion dismissed its claim against
17 Americana with prejudice and Americana dismissed its claim against Marion
18 with prejudice. The stipulation was filed in the district court, and the district
19 court approved it. The stipulation and order for dismissal stated that Marion's
20 claims against Americana were "dismissed with prejudice, [Marion] reserving
21 all rights to bring claims against the principals, incorporators or indemnitors
22 of Americana Construction Company."

23 Marion Properties, Ltd. by Loyal Crownover v. Goff, 840 P.2d 1230, 108 Nev.
24 946 (Nev., 1992)

25 Robinson cannot point to any similarities to the facts in Marion; no
26 settlement, no dismissal with prejudice, no intent to release claims. In fact, as part of

1 their confirmed bankruptcy plan VCC agreed to carve out claims brought by investors
2 against Ron Robinson. This is because they intended to sue Robinson themselves
3 (though they backed off when he offered the company free rent.) From the VCC
4 Bankruptcy Disclosure Statement:

5 2. Claims against Third Parties. The Debtor believes it holds viable
6 claims against former officer and director, Ronald J. Robinson ("Robinson"),
7 and possibly other parties arising from the misuse of proceeds from the
8 Unsecured Notes and related matters. Robinson disputes such claims and
9 denies that he is liable to the Debtor for any misuse of any proceeds from the
10 Unsecured Notes. To date, the Debtor has chosen not to pursue any claim
11 against Robinson (i) due to the high costs and uncertainty of litigation and (ii)
12 because Robinson has agreed to allow WinTech to occupy and use space in a
13 commercial building in which he holds an ownership interest on a rent free
14 basis. The Debtor believes the market value of the free rent provided to
15 WinTech by Robinson to be approximately \$10,000 per month. Although
16 informal, the Debtor's management believes that the current arrangement
17 with Robinson is preferable to litigation and would prefer that this
18 arrangement continue for the foreseeable future should the Plan be confirmed.

19 In the event of a Chapter 7 liquidation, the Debtor believes that there is
20 a substantial likelihood that a Chapter 7 Trustee would assert claims against
21 Robinson and possibly others arising from the misuse of proceeds from the
22 Unsecured Notes. Given the inherent uncertainty and expense of litigation, the
23 Debtor believes that \$100,000 is a fair and reasonable estimate of the net
24 amount a Chapter 7 Trustee might ultimately recover from the pursuit of such
25 claims. However, it is possible that the pursuit of such claims could yield
26 significantly more or significantly less than \$100,000.

See Exhibit "E" attached.

This is VCC's own statement to the Bankruptcy Court. It squares with former
Director Frank Yoder's sworn testimony that Mr. Robinson misappropriated millions.
In any event, VCC's discharge does not discharge Robinson's guarantee, and
Defendants have not offered a single bankruptcy case or citation in support of their

1 position that the guarantee is extinguished.

2 CONCLUSION

3 Because the issues raised are untimely and legally unsupportable, the Court
4 should deny all relief requested in Defendants "Pre Trial Brief".

5 Dated: February 10, 2020

Respectfully submitted,

6 The Law Office of David Liebrader, Inc.

7 By:/s/ David Liebrader

8 David Liebrader

9 Attorney for Plaintiffs
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CERTIFICATE OF MAILING

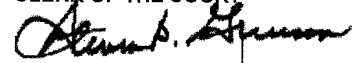
I hereby certify that on the 10th day of February, 2020, I mailed a copy of the foregoing
Opposition to Defendants Trial Brief
to the following

Harold Gewerter, Esq.
Gewerter Law Firm
1212 Casino Center Boulevard
Las Vegas, NV 89104

/s/: Dianne Bresnahan

An Employee of The Law Office of David Liebrader

EXHIBIT “A”



1 DAVID LIEBRADER, ESQ.
2 STATE BAR NO. 5048
3 THE LAW OFFICES OF DAVID LIEBRADER, APC
4 601 S. RANCHO DR STE. D-29
5 LAS VEGAS, NV 89106
6 PH: (702) 380-3131
7 Attorney for Plaintiffs

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 IN THE MATTER BETWEEN

11 Steven A. Hotchkiss,

12 PLAINTIFF,

13 v.

14 Ronald J. Robinson, Vernon Rodriguez, Frank
15 Yoder, Alisa Davis and DOES 1-10 and ROES 1-
16 10, inclusively

17 DEFENDANTS

18 Anthony White, Robin Suntheimer, Troy
19 Suntheimer, Stephens Ghesquiere, Jackie Stone,
20 Gayle Chany, Kendall Smith, Gabriele
21 Lavermicocca and Robert Kaiser,

22 PLAINTIFFS

23 v

24 Ronald J. Robinson, Vernon Rodriguez, Virtual
25 Communications Corporation, Frank Yoder, Alisa
26 Davis and DOES 1-10 and ROES 1-10, inclusively

) Case No. A-17-762264-C

) Dept.: 8

) NOTICE OF DELEGATION OF
) RIGHTS

) CONSOLIDATED WITH

) Case No. A-17-763003-C

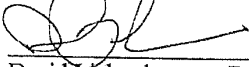
27 TO THE COURT, THE PARTIES AND ALL INTERESTED PERSONS. PLEASE TAKE
28 NOTICE that Provident Trust Group hereby delegates whatever rights it has to pursue this

1 litigation on behalf of Steven A. Hotchkiss, Anthony White, Troy Suntheimer, Stephens
2 Ghesquiere, Jackie Stone, Gayle Chany, Kendall Smith, Gabriele Lavermicocca and Robert
3 Kaiser ("Plaintiffs") to Plaintiffs, to be pursued by their attorney David Liebrader in the
4 present action.

5 Provident Trust Group serves as a self-directed IRA Custodian for Plaintiffs (with the
6 exception of Robin Suntheimer), and denies it has any obligation to prosecute any claim on
7 behalf of Plaintiffs. To the extent any rights do exist, Provident Trust hereby delegates those
8 rights to Plaintiffs, to be prosecuted by their attorney.

9 
10 On behalf of Provident Trust Dated: 2/5/2020

11
12 AGREED AND ACCEPTED:

13 
14 David Liebrader Dated: 2.6.20
On behalf of Plaintiffs

15
16 Dated: January 29, 2020 (70)

Respectfully submitted,

17
18 The Law Office of David Liebrader, Inc.

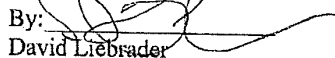
19 By: 
20 David Liebrader
Attorney for Plaintiffs

EXHIBIT “B”

INDIVIDUAL RETIREMENT CUSTODIAL ACCOUNT AGREEMENT

Form 5305-A under section 408(a) of the Internal Revenue Code.

FORM (Rev. April 2017)

The depositor named on the application is establishing a Traditional individual retirement account under section 408(a) to provide for his or her retirement and for the support of his or her beneficiaries after death.

The custodian named on the application has given the depositor the disclosure statement required by Regulations section 1.408-6.

The depositor has assigned the custodial account the sum indicated on the application.

The depositor and the custodian make the following agreement:

ARTICLE I

Except in the case of a rollover contribution described in section 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16), an employer contribution to a simplified employee pension plan as described in section 408(k) or a recharacterized contribution described in section 408A(d)(6), the custodian will accept only cash contributions up to \$5,500 per year for tax years 2013 through 2017. For individuals who have reached the age of 50 by the end of the year, the contribution limit is increased to \$6,500 per year for tax years 2013 through 2017. For years after 2017, these limits will be increased to reflect a cost-of-living adjustment, if any.

ARTICLE II

The depositor's interest in the balance in the custodial account is nonforfeitable.

ARTICLE III

1. No part of the custodial account funds may be invested in life insurance contracts, nor may the assets of the custodial account be commingled with other property except in a common trust fund or common investment fund (within the meaning of section 408(a)(5)).
2. No part of the custodial account funds may be invested in collectibles (within the meaning of section 408(m)) except as otherwise permitted by section 408(m)(3), which provides an exception for certain gold, silver, and platinum coins, coins issued under the laws of any state, and certain bullion.

ARTICLE IV

1. Notwithstanding any provision of this agreement to the contrary, the distribution of the depositor's interest in the custodial account shall be made in accordance with the following requirements and shall otherwise comply with section 408(a)(6) and the regulations thereunder, the provisions of which are herein incorporated by reference.
2. The depositor's entire interest in the custodial account must be, or begin to be, distributed not later than the depositor's required beginning date, April 1 following the calendar year in which the depositor reaches age 70½. By that date, the depositor may elect, in a manner acceptable to the custodian, to have the balance in the custodial account distributed in: (a) A single sum or (b) Payments over a period not longer than the life of the depositor or the joint lives of the depositor and his or her designated beneficiary.
3. If the depositor dies before his or her entire interest is distributed to him or her, the remaining interest will be distributed as follows:
 - (a) If the depositor dies on or after the required beginning date and:
 - (i) the designated beneficiary is the depositor's surviving spouse, the remaining interest will be distributed over the surviving spouse's life expectancy as determined each year until such spouse's death, or over the period in paragraph (a)(iii) below if longer. Any interest remaining after the spouse's death will be distributed over such spouse's

remaining life expectancy as determined in the year of the spouse's death and reduced by one for each subsequent year, or, if distributions are being made over the period in paragraph (a)(iii) below, over such period.

- (ii) the designated beneficiary is not the depositor's surviving spouse, the remaining interest will be distributed over the beneficiary's remaining life expectancy as determined in the year following the death of the depositor and reduced by one for each subsequent year, or over the period in paragraph (a)(iii) below if longer.
 - (iii) there is no designated beneficiary, the remaining interest will be distributed over the remaining life expectancy of the depositor as determined in the year of the depositor's death and reduced by one for each subsequent year.
- (b) If the depositor dies before the required beginning date, the remaining interest will be distributed in accordance with paragraph (i) below or, if elected or there is no designated beneficiary, in accordance with paragraph (ii) below.
 - (i) The remaining interest will be distributed in accordance with paragraphs (a)(i) and (a)(ii) above (but not over the period in paragraph (a)(iii), even if longer), starting by the end of the calendar year following the year of the depositor's death. If, however, the designated beneficiary is the depositor's surviving spouse, then this distribution is not required to begin before the end of the calendar year in which the depositor would have reached age 70½. But, in such case, if the depositor's surviving spouse dies before distributions are required to begin, then the remaining interest will be distributed in accordance with paragraph (a)(ii) above (but not over the period in paragraph (a)(iii), even if longer), over such spouse's designated beneficiary's life expectancy, or in accordance with paragraph (ii) below if there is no such designated beneficiary.
 - (ii) The remaining interest will be distributed by the end of the calendar year containing the fifth anniversary of the depositor's death.
 4. If the depositor dies before his or her entire interest has been distributed and if the designated beneficiary is not the depositor's surviving spouse, no additional contributions may be accepted in the account.
 5. The minimum amount that must be distributed each year, beginning with the year containing the depositor's required beginning date, is known as the "required minimum distribution" and is determined as follows:
 - (a) The required minimum distribution under paragraph 2(b) for any year, beginning with the year the depositor reaches age 70½, is the depositor's account value at the close of business on December 31 of the preceding year divided by the distribution period in the uniform lifetime table in Regulations section 1.401(a)(9)-9. However, if the depositor's designated beneficiary is his or her surviving spouse, the required minimum distribution for a year shall not be more than the depositor's account value at the close of business on December 31 of the preceding year divided by the number in the joint and last survivor table in Regulations section 1.401(a)(9)-9. The required minimum distribution for a year under this paragraph (a) is determined using the depositor's (or, if applicable, the depositor and spouse's) attained age (or ages) in the year.

- (b) The required minimum distribution under paragraphs 3(a) and 3(b)(i) for a year, beginning with the year following the year of the depositor's death (or the year the depositor would have reached age 70½, if applicable under paragraph 3(b)(i)) is the account value at the close of business on December 31 of the preceding year divided by the life expectancy (in the single life table in Regulations section 1.401(a)(9)-9) of the individual specified in such paragraphs 3(a) and 3(b)(i).
 - (c) The required minimum distribution for the year the depositor reaches age 70½ can be made as late as April 1 of the following year. The required minimum distribution for any other year must be made by the end of such year.
6. The owner of two or more Traditional IRAs may satisfy the minimum distribution requirements described above by taking from one Traditional IRA the amount required to satisfy the requirement for another in accordance with the regulations under section 408(a)(6).

ARTICLE V

1. The depositor agrees to provide the custodian with all information necessary to prepare any reports required by section 408(i) and Regulations sections 1.408-5 and 1.408-6.
2. The custodian agrees to submit to the Internal Revenue Service (IRS) and depositor the reports prescribed by the IRS.

ARTICLE VI

Notwithstanding any other articles which may be added or incorporated, the provisions of Articles I through III and this sentence will be controlling. Any additional articles inconsistent with section 408(a) and the related regulations will be invalid.

ARTICLE VII

This agreement will be amended as necessary to comply with the provisions of the Code and the related regulations. Other amendments may be made with the consent of the persons whose signatures appear on the application.

ARTICLE VIII

- 8.01 **Definitions** – In this part of this agreement (Article VIII), the words “you” and “your” mean the depositor. The words “we,” “us,” and “our” mean the custodian. The word “Code” means the Internal Revenue Code, and “regulations” means the Treasury regulations.
- 8.02 **Notices and Change of Address** – Any required notice regarding this IRA will be considered effective when we send it to the intended recipient at the last email address we have in our records. If no email address was provided, we will provide such notice by U.S. mail to the last address we have in our records. This notice will direct you to our website to view any new information pertaining to your IRA electronically unless you notify us that you prefer we provide you with paper copies of the same. You, or the intended recipient, must promptly notify us of any change of email or mailing address. Any notice to be given to us will be considered effective when we actually receive it.
- 8.03 **Representations and Responsibilities**
 - a. *In General.* You represent and warrant to us that any information you have given or will give us with respect to this agreement is complete and accurate. Further, you agree that any directions you give us or action you take will be in compliance with applicable laws and proper under this agreement, and that we are entitled to rely upon any such information or directions. If we fail to receive directions from you regarding any transaction, if we receive ambiguous directions regarding any transaction, or if we, in good faith, believe that any transaction requested is in dispute, we reserve the right to take no action until further clarification

acceptable to us is received from you or the appropriate government or judicial authority. We will not be responsible for losses of any kind that may result from your directions to us or your actions or failures to act, or for our exercising our right to take no action until we have received further clarification acceptable to us, and you agree to reimburse and indemnify us for any loss we may incur as a result of such directions, actions, or failures to act. We will not be responsible for any penalties, taxes, judgments, or expenses you incur in connection with your IRA. We have no duty to determine whether your contributions or distributions comply with the Code, regulations, rulings, or this agreement.

We may permit you to appoint, through written notice acceptable to us, an authorized agent to act on your behalf with respect to this agreement (e.g., attorney-in-fact, executor, administrator, and investment manager); we have no duty to determine the validity of such appointment or any instrument appointing such authorized agent. We will not be responsible for losses of any kind that may result from directions, actions, or failures to act by your authorized agent, and you agree to reimburse and indemnify us for any loss we may incur as a result of such directions, actions, or failures to act by your authorized agent.

You will have 60 days after you receive any documents, statements, or other information from us to notify us in writing of any errors or inaccuracies reflected in these documents, statements, or other information. If you do not notify us within 60 days, the documents, statements, or other information will be deemed correct and accurate, and we will have no further liability or obligation for such documents, statements, other information, or the transactions described therein.

By performing services under this agreement we are acting as your agent. You acknowledge and agree that nothing in this agreement will be construed as conferring fiduciary status upon us. We will not be required to perform any additional services unless specifically agreed to under the terms and conditions of this agreement, or as required under the Code and the regulations promulgated thereunder with respect to IRAs. We may employ agents and organizations for the purpose of performing administrative or other custodial-related services with respect to your IRA for which we otherwise have responsibility under this agreement, and the limitations on our duties to you under this agreement or otherwise will also apply with respect to each agent or organization so employed. You represent to us that if a mandatory distribution arises, you will have the means through your IRA and/or other retirement accounts to meet any mandatory distribution requirements. You agree to release, indemnify, and hold us harmless for any and all claims, actions, proceedings, damages, judgments, liabilities, costs, and expenses (including, without limitation, attorney's fees) arising from or in connection with this agreement.

To the extent written instructions or notices are required under this agreement, we may accept or provide such information in any other form permitted by the Code or applicable regulations including, but not limited to, electronic communication.

UNDER NO CIRCUMSTANCES ARE WE, OR OUR OFFICERS, DIRECTORS, EMPLOYEES, MEMBERS, AGENTS, LICENSORS, OR REPRESENTATIVES, SUBJECT TO OR LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY OR SIMILAR DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES OR COSTS INCURRED AS A RESULT OF LOSS OF TIME, LOSS OF SAVINGS, LOSS OF DATA, LOSS OF REVENUES AND/OR PROFITS, WHETHER FORESEEABLE OR UNFORESEEABLE, THAT MAY ARISE OUT OF OR IN

CONNECTION WITH THIS AGREEMENT OR CUSTODIAN OR ADMINISTRATOR COMPLYING WITH YOUR DIRECTIONS, REGARDLESS IF SUCH DAMAGES ARE BASED IN CONTRACT, TORT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE.

- b. *Prohibited Transactions.* You understand that certain transactions are prohibited in IRA plans under the Code, and specifically Code section 4975. You further understand that the determination of a prohibited transaction depends on the facts and circumstances that surround the particular transaction. You understand that we have no obligation or duty to make a determination, and accordingly will make no determination, as to whether any IRA investment is prohibited. You further understand that should your IRA engage in a prohibited transaction, you will incur a taxable distribution as well as possible penalties. You represent to us that you have consulted or will consult with your own tax or legal professional to ensure that none of your directions or instructions or IRA investments will constitute a prohibited transaction and that your IRA investments will comply with all applicable federal and state laws, regulations, and requirements.
- c. *Unrelated Business Income Tax (UBIT).* Since your IRA is a tax-exempt organization under the Code, if your IRA earns income from an investment that uses debt financing or that is derived from a business regarded as not related to the exempt purpose of your IRA, it may be subject to the so-called "unrelated business income tax" if it is in excess of permitted thresholds. For example, income from an IRA investment in a partnership generally will result in unrelated business taxable income. In the event that your investment of IRA assets results in taxable income (unrelated or debt-financed) under the Code (or other rules) for any taxable year, you agree to prepare or have prepared the applicable returns, an application for employer identification number (if not previously obtained), and any other documents that may be required, and to submit them to us for filing with the Internal Revenue Service (IRS) (or any other governmental entity), at least five days before the date on which the return is due for such taxable year, along with an appropriate payment directive authorizing us to execute the forms on behalf of your IRA and to pay the applicable unrelated business income tax from your IRA. You understand that we have no obligation or duty to prepare or have prepared such documents. You agree, however, that we may prepare any forms, returns, or other required documentation if you do not provide them in time. All taxes and the expenses incurred in preparing such documentation will be considered your IRA's expense and may be debited from your IRA. If your IRA has insufficient liquid assets to pay these expenses, you may pay them yourself. Certain IRA reimbursements are considered annual contributions. To ensure proper governmental reporting, you must inform us of any IRA expense that you pay for outside your IRA.
- d. *Listed Transactions and Reportable Transactions.* You understand that certain transactions are or may be identified by the IRS as abusive tax shelter schemes or transactions. You further understand that the determination of a listed or reportable transaction may depend upon the facts and circumstances that surround the particular transaction. We have no duty to make a determination as to whether any IRA investment constitutes a listed or reportable transaction. You represent to us that you have consulted or will consult with your own tax or legal professional to ensure that any listed or reportable transactions engaged in by your IRA are identified. You further represent and acknowledge to us that with respect to any listed or reportable transaction you are considered the entity manager who approved or caused your IRA to be a party to the transaction and that you are responsible for: reporting each such transaction to the IRS, using the applicable IRS form; paying any applicable excise taxes, using the applicable IRS form; disclosing to us that such transaction was a prohibited tax shelter transaction; and directing us as to any necessary corrective action to be taken by your IRA.
- e. *Passive Custodian Provides No Investment Advice.* From time to time, we may provide general investment information regarding the products we offer through webinars, newsletters, social media posts, our website, and other forums, which you acknowledge and agree is not investment advice. Similarly, you acknowledge and agree that we may participate in events with other companies in our industry, which is not and should not be interpreted as our endorsement of any of the other participants. You further acknowledge and agree that we are strictly a passive custodian and as such do not provide legal or tax services or advice with respect to your IRA investments; and you release and indemnify and agree to hold harmless and defend us in the event that any investment or sale of your IRA assets pursuant to a *Direction of Investment* form violates any federal or state law or regulation or otherwise results in a disqualification, penalty, fine, or tax imposed upon you, your IRA, or us.
- f. *Investment Conforms to All Applicable Securities Laws.* You represent to us that if any investment by your IRA is a security under applicable federal or state securities laws, such investment has been registered or is exempt from registration under federal and state securities laws; and you release and waive all claims against us for our role in carrying out your instructions with respect to such investment. You acknowledge that the foregoing representation is being relied upon by us in accepting your investment directions and you agree to indemnify us with respect to all costs, expenses (including attorneys' fees), fines, penalties, liabilities, damages, actions, judgments and claims arising out of such investment and/or a breach of the foregoing representation, including, without limitation, claims asserted by you.
- g. *Custodian Not Responsible for Insurance.* We will not bear or assume any responsibility to notify you about or to secure or maintain fire, casualty, liability, or other insurance coverage on any personal or real property held by your IRA or that serves as collateral under any mortgage or other security instrument held by your IRA with respect to any promissory note or other evidence of indebtedness. It is incumbent upon you as the IRA owner to arrange for such insurance as you determine necessary or appropriate to protect your IRA assets and to direct us in writing as to the payment of any premiums therefore. Furthermore it is your responsibility to determine that payment has been made upon your written request by verifying same with your IRA statements. We will not be responsible for notification or payments of any insurance premiums, real estate taxes, utilities, or other charges with respect to any investment held in your IRA, unless you specifically direct us to pay the same in writing and sufficient funds are available to pay same from your IRA. Furthermore, it is your responsibility to determine that payment has been made from the IRA. You must use an appropriate *Payment Directive* form available from us within a sufficient period of time for such direction to be accomplished in accordance with our normal business practices (without regard to whether we have undertaken efforts to comply with such directive).
- h. *Service Fees.* We have the right to charge establishment, document, and custodial fees, as well as other designated fees (e.g., a transfer, rollover, or termination fee) for maintaining your IRA. In addition, and as described in more detail in Section 8.05, we have the right to collect or otherwise receive as an additional fee any interest or other income earned or generated from any Uninvested Cash

Funds (as defined in Section 8.05), and to be reimbursed for all reasonable expenses, including legal expenses, we incur in connection with the administration of your IRA. We may charge you separately for any fees or expenses, or we may deduct the amount of the fees or expenses from the assets in your IRA at our discretion. We reserve the right to charge any additional, reasonable fee to you after giving you 30 days' notice. Fees such as sub-accounting and other service fees may be paid to us or an associated business by third parties for assistance in performing certain transactions with respect to this IRA. In addition, we or an associated business may receive other income from third parties in connection with performing such services or the purchase and sale of publicly traded securities, privately held securities, or any other assets that may or may not be deemed to be securities, which you may have directed us to purchase or sell.

- i. *All Invoices Are Due and Payable Upon Receipt.* If such charge cannot be paid from your IRA assets (e.g., if your IRA does not contain sufficient cash assets), we will submit an invoice to you for all outstanding fees and expenses plus any applicable invoice costs and late charges. IRA expenses that you pay out of pocket may be considered regular IRA contributions, which are reported to the IRS and are subject to the annual contribution limitations. To collect such fees and/or expenses we may, and you expressly authorize us to, bill any credit card we have in our records related to your IRA, collect from any Uninvested Cash Funds held in your IRA, and/or liquidate sufficient investments in your IRA in accordance with Section 8.13 of this Article to pay such fees and expenses.

Any brokerage commissions attributable to the assets in your IRA will be charged to your IRA. Any reimbursements to your IRA for those commissions are considered IRA contributions and are subject to the annual IRA contribution limitations.

- j. *Interest and Earnings.* We may perform sub-accounting, recordkeeping, administrative or other services related to your IRA, and for these services we retain and receive interest and other income from assets that you have not directed us to invest. This income includes amounts generated on the Uninvested Cash Funds that we deposit with other financial institutions.

8.04 **Disclosure of Account Information** – We may use agents and/or subcontractors to assist in administering your IRA. We may release nonpublic personal information regarding your IRA to such providers as necessary to provide the products and services made available under this agreement, and to evaluate our business operations and analyze potential product, service, or process improvements.

8.05 Investment of Amounts in the IRA

- a. *In General.* You have exclusive responsibility for and control over the investment of the assets of your IRA. All transactions will be subject to any and all restrictions or limitations, direct or indirect, that are imposed by any and all applicable federal and state laws and regulations; the rules, regulations, customs, and usages of any exchange, market, or clearing house where the transaction is executed; our internal policies, standards, and practices; and this agreement. After your death, your beneficiaries will have the right to direct the investment of your IRA assets, subject to the same conditions that applied to you during your lifetime under this agreement (including, without limitation, Section 8.03). We will not exercise the voting rights and other shareholder rights with respect to investments in your IRA unless you provide timely written directions acceptable to us according to our then current policies and procedures.

You will select the type of investment for your IRA assets, provided, however, that your selection of investments must

be limited to those types of investments that comport with our internal policies, practices, and standards and are deemed administratively feasible by us. We may, or an associated business may, in our, or their, sole discretion, make available to you additional opportunities, which may include publicly traded securities, mutual funds, money market instruments, and other investments that are obtainable by us, or an associated business, and that we, or such associated business, are capable of holding in the ordinary course of business.

- b. *Custodian Acting in Passive Capacity Only.* We are acting as a passive, directed, and non-discretionary custodian in holding IRA assets. Accordingly, we are not a fiduciary (as this term is defined in the Code, ERISA, or any other applicable federal, state or local laws) with respect to your IRA, and you acknowledge and agree that we are not a fiduciary with respect to your IRA.

It is not our responsibility to review the prudence, merits, viability or suitability of any investment directed by you or your investment advisors or to determine whether the investment is acceptable under ERISA, the Code or any other applicable law. We do not offer any investment advice, nor do we endorse any investment, investment product or investment strategy; and we do not endorse any investment advisor, representative, broker, or other party selected by you. We have no responsibility to question or otherwise evaluate any investment directions given by you or by any investment advisor or representative appointed by you.

It is your responsibility to perform proper due diligence with regard to any such investment, representative, investment advisor, broker or other party. We will follow the directions of any such investment advisor, representative, broker or other party selected by you, provided you furnish us with written authorization and documentation acceptable to us, which may include a legal opinion. We will be entitled to all the same protections and indemnities in our reliance upon and execution of the directives of such investment advisor or other party as if such directives were given by you. We are under no obligation or duty to investigate, analyze, monitor, verify title to, or otherwise evaluate or perform due diligence for any investment directed by you or your investment advisor, representative or agent; nor are we responsible to notify you or take any action should there be any default or other obligation with regard to any investment. Any review performed by us with respect to an investment is solely for our own purposes of determining compliance with our internal policies, practices and standards, as we determine from time to time and the administrative feasibility of the investment and neither such review nor its acceptance should be construed in any way as an endorsement of any investment, investment company or investment strategy. We also have the right not to effect any transaction/investment that we deem to be beyond the scope of our administrative responsibilities, capabilities, or expertise or that we determine in our sole discretion does not comport with our internal policies, practices, or standards. We have no duty or obligation to notify you with respect to any information, knowledge, irregularities, or our concerns relating to your investment or your investment advisor, broker, agent, promoter, or representative, except as to civil pleadings or court orders received by us. We will use reasonable efforts to acquire or sell investments in accordance with your directions within a reasonable period of time after we have received an investment direction, and we will make reasonable efforts to notify you if we are unable or unwilling to comply with an investment direction. Subject to the foregoing, we will remit funds as directed, but have no responsibility to verify or ensure that such funds have been invested to purchase or acquire the asset selected by you.

c. *Investment Documentation.* In directing us with respect to any investment, you must use our *Direction of Investment* form or such other form acceptable to us. We may act upon any instrument, certificate, paper or transmission believed to be genuine and that is signed or presented by the proper person or persons whether or not by facsimile or other form acceptable to us. We are under no duty to make any investigation or inquiry as to any statement contained in any such communication, but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained. You authorize and direct us to execute and deliver, on behalf of your IRA, any and all documents delivered to us in connection with your IRA investments; and we have no responsibility to verify or determine that any such documents are complete, accurate, or constitute the documents necessary to comply with your investment direction. You authorize and direct us to correct errors in investment titling without notice to you and to correct other minor clerical errors with telephone or email consent from you upon verification of your identity. We will retain electronic copies of documents related to your IRA as described in Treasury Regulations section 1.408-2(e)(5)(vii) in our capacity as a recordkeeper and not as any type of safekeeping agent. See also, Nevada Revised Statutes (NRS) 719.240; NRS 719.290. However, please note that we require all original stock certificates titled in the name of your IRA to be held by us.

d. *Uninvested Cash Funds.* From time to time you may deposit funds with us, have available free credit balances, or otherwise direct us to hold funds for you not subject to a current *Direction of Investment* or otherwise awaiting your direction for investment or deposit (collectively referred to as "Uninvested Cash Funds"). You acknowledge and agree that Uninvested Cash Funds from your IRA may be invested on an omnibus basis with Uninvested Cash Funds from other accounts.

You direct us to sweep or deposit all Uninvested Cash Funds automatically into an FDIC insured bank account or any investment backed by the U.S. Treasury and/or full faith and credit of the United States Government (which may be invested on an omnibus basis with Uninvested Cash Funds from other accounts) until such time as further direction is received from you or your designated representative(s). You also authorize us to transfer any Uninvested Cash Funds to a different FDIC insured bank account without any further approval from you. Accounts used to hold Uninvested Cash Funds may include, without limitation, certificates of deposit, money market accounts, similar FDIC or government insured accounts at state or national banks or credit unions, or any investment backed by the U.S. Treasury and/or full faith and credit of the United States Government. Any FDIC insurance, which may be applicable to your account, is subject to all applicable laws and regulations, including those laws and regulations related to FDIC insurance limitations. We are entitled to retain and have paid to us as a fee any interest or other income earned or otherwise generated from the Uninvested Cash Funds deposited in such accounts, including any amounts paid to us by financial institutions at the time we deposit the Uninvested Cash Funds. You acknowledge and agree that we may retain this fee as compensation for the services we provide under this agreement.

8.06 **Beneficiaries** – If you die before you receive all of the amounts in your IRA, payments from your IRA will be made to your beneficiaries. We have no obligation to pay to your beneficiaries until such time we are notified of your death by receiving a valid death certificate.

You may designate one or more persons or entities as beneficiary of your IRA. This designation can only be made on a form provided by or acceptable to us, and it will only be effective when it is filed with us during your lifetime. Each beneficiary

designation you file with us will cancel all previous designations. The consent of your beneficiaries will not be required for you to revoke a beneficiary designation. If you have designated both primary and contingent beneficiaries and no primary beneficiary survives you, the contingent beneficiaries will acquire the designated share of your IRA. If you do not designate a beneficiary or if all of your primary and contingent beneficiaries predecease you, your estate will be the beneficiary.

A spouse beneficiary will have all rights as granted under the Code or applicable regulations to treat your IRA as his or her own.

We may allow, if permitted by state law, an original IRA beneficiary (the beneficiary who is entitled to receive distributions from an inherited IRA at the time of your death) to name successor beneficiaries for the inherited IRA. This designation can only be made on a form provided by or acceptable to us, and it will only be effective when it is filed with us during the original IRA beneficiary's lifetime. Each beneficiary designation form that the original IRA beneficiary files with us will cancel all previous designations. The consent of a successor beneficiary will not be required for the original IRA beneficiary to revoke a successor beneficiary designation. If the original IRA beneficiary does not designate a successor beneficiary, his or her estate will be the successor beneficiary. In no event will the successor beneficiary be able to extend the distribution period beyond that required for the original IRA beneficiary.

If we so choose, for any reason (e.g., due to limitations of our charter or bylaws), we may require that a beneficiary of a deceased IRA owner take a total distribution of all IRA assets by December 31 of the year following the year of death. Alternatively, the beneficiary may transfer the assets to a successor trustee or custodian.

8.07 **Required Minimum Distributions** – Your required minimum distribution is calculated using the uniform lifetime table in Regulations section 1.401(a)(9)-9. However, if your spouse is your sole designated beneficiary and is more than 10 years younger than you, your required minimum distribution is calculated each year using the joint and last survivor table in Regulations section 1.401(a)(9)-9.

If you fail to request your required minimum distribution by your required beginning date, we can, at our complete and sole discretion, do any one of the following.

- Make no distribution until you give us a proper withdrawal request
- Distribute your entire IRA to you in a single sum payment
- Determine your required minimum distribution from your IRA each year based on your life expectancy, calculated using the uniform lifetime table in Regulations section 1.401(a)(9)-9, and pay those distributions to you until you direct otherwise

We will not be liable for any penalties or taxes related to your failure to take a required minimum distribution or to your receipt of an amount in excess of the required minimum distribution.

8.08 **Termination of Agreement, Resignation, or Removal of Custodian** – Either party may terminate this agreement at any time by giving written notice to the other. However, your termination of this agreement will not be effective until such time as all outstanding fees, costs, indemnities, penalties, expenses, or payments due to us are paid. We can resign as custodian at any time effective 30 days after we send written notice of our resignation to you through email (if an email address was provided, otherwise such notice will be sent to you through U.S. mail). Upon receipt of that notice, you must make arrangements to transfer your IRA to another financial organization. If you do not complete a transfer of your IRA within 30 days from the date

we send the notice to you, we have the right to transfer your IRA assets to a successor IRA trustee or custodian that we choose in our sole discretion, or we may pay or distribute your IRA assets to you in a single sum or assignment. If we transfer your IRA, the existing IRA documents will govern your IRA relationship with the new custodian or trustee unless the successor custodian/trustee notifies you in writing of any changes and/or requires new IRA documents to be signed by you. We will not be liable for any actions or failures to act on the part of any successor trustee or custodian, nor for any tax consequences you may incur that result from the transfer or distribution of your assets pursuant to this section.

If this agreement is terminated, we may charge to your IRA a reasonable amount of money that we believe is necessary to cover any associated costs, including but not limited to one or more of the following.

- Any fees, expenses, or taxes chargeable against your IRA
- Any penalties or surrender charges associated with the early withdrawal of any savings instrument or other investment in your IRA. After your IRA with us is closed, if there are additional assets remaining in or subsequently credited to your IRA, we will seek to distribute or transfer such assets in accordance with your prior direction, but only after offsetting any applicable administrative expenses and custodial fees (according to our then operative fee schedule).

We may establish a policy requiring distribution of the entire balance of your IRA to you in cash or property if the balance of your IRA drops below the minimum balance required under the applicable investment or policy established.

- 8.09 **Successor Custodian** – If our organization changes its name, reorganizes, merges with another organization (or comes under the control of any federal or state agency), or if our entire organization (or any portion that includes your IRA) is bought by another organization, that organization (or agency) will automatically become the trustee or custodian of your IRA, but only if it is the type of organization authorized to serve as an IRA trustee or custodian.
- 8.10 **Amendments** – We have the right to amend this agreement at any time. Any amendment we make, including those made to comply with the Code and related regulations, does not require your consent. You will be deemed to have consented to any other amendment unless, within 30 days from the date we send the amendment, you notify us in writing that you do not consent.
- 8.11 **Withdrawals or Transfers** – All requests for withdrawal or transfer will be in writing on a form provided by or acceptable to us. The method of distribution must be specified in writing or in any other method acceptable to us. The tax identification number of the recipient must be provided to us before we are obligated to make a distribution. Withdrawals will be subject to all applicable tax and other laws and regulations, including but not limited to possible early distribution penalty taxes, surrender charges, and withholding requirements.
- 8.12 **Transfers From Other Plans** – We can receive amounts transferred to this IRA from the trustee or custodian of another IRA as permitted by the Code. In addition, we can accept rollovers of eligible rollover distributions from employer-sponsored retirement plans as permitted by the Code. We reserve the right not to accept any transfer or direct rollover.
- 8.13 **Liquidation of Assets; Grant of Security Interest Upon Default**
- a. We have the right to liquidate assets in your IRA if necessary to make distributions or to pay fees, expenses, indemnities, taxes, federal tax levies, penalties, or surrender charges properly chargeable against your IRA. If you fail to direct us as

to which assets to liquidate, we will decide, in our complete and sole discretion, and you agree not to hold us liable for any adverse consequences that result from our decision.

- b. If payment is not received on or before the due date listed on your invoice, a \$50 late fee will be assessed to your IRA and a *Past Due Notice* will be issued to you. In the event you fail to pay any fees, costs, indemnities, penalties, expenses, or payments due to us required by your Account Agreement or otherwise, and upon issuance of the *Past Due Notice*, we reserve the right to proceed with the process for establishing a lien on and security interest in all of your rights, title and interests in such portion of the IRA, the Uninvested Cash Funds and any other deposit, monies, accounts and other assets in such accounts or otherwise deposited with us at such time in an amount equal to the amounts necessary to pay in full such amounts then due to us, as collateral security for the prompt and complete payment of such unpaid fees or other amounts due and owing, to the maximum extent permitted by law or regulations, at our complete and sole discretion. Upon our providing you with notice through email (or through U.S. mail if no email address was provided) of our intent to pursue such security interest, you hereby authorize us to file all financing statements and other documents and take such other actions as may from time to time be necessary or desirable in our complete and sole discretion to perfect and to maintain the perfection and priority of such security interest and/or authorize us to liquidate the asset(s) without your prior approval and without any further notice. You understand and agree that pursuant to Code section 408(e) the portion of any IRA funds pledged as collateral may be treated as distributed to you and subject to taxes, interest, and penalties, which you will be responsible for and agree to indemnify and hold us harmless therefrom. Such a deemed distribution may also trigger IRS Form 1099-R reporting, either when the lien is created or at some other required point.

We may, at our complete and sole discretion, liquidate sufficient asset(s) to cover outstanding fees plus one year's estimated fees, including the Account Termination Fee, and you agree not to hold us responsible for any adverse consequences that result from our decision. Upon receipt, such liquidated funds will first be applied to outstanding fees. Remaining balances, if any, will be placed into your IRA. We have no liability for any adverse tax or other financial consequences as a result of liquidating your IRA to cover the fees and charges. IRAs with past due fees, unfunded IRAs, and IRAs with zero value will continue to incur administration and maintenance fees until such time as you notify us in writing of your intent to close the IRA or of your wish that we resign. Should fees not be collected, we have the option to cease performing any functions, including, but not limited to, processing investment transactions, until such time as all fees charged against the IRA are fully paid. We may then close your IRA and distribute all assets to you, which will be reported to the IRS on Form 1099-R and may subject you to possible taxes and penalties. In the event of non-payment, we may employ a collection agency to recover any unpaid fees or expenses. You will be personally liable for all Re-registration Fees, Late Fees, Account Termination Fees, and any other fees related to collection of fees, including but not limited to, third party fees incurred.

- 8.14 **Restrictions on the Fund** – Neither you nor any beneficiary may sell, transfer, or pledge any interest in your IRA in any manner whatsoever, except as provided by law or this agreement.
- 8.15 **What Law Applies** This agreement is subject to all applicable federal and state laws and regulations. If it is necessary to apply any state law to interpret and administer this agreement, the law of the state in which we are chartered will govern.

If any part of this agreement is held to be illegal or invalid, the remaining parts will not be affected. Neither your nor our failure to enforce at any time or for any period of time any of the provisions of this agreement will be construed as a waiver of such provisions, or your right or our right thereafter to enforce each and every such provision.

- 8.16 **Valuations Policy** – Each year (and when you take IRA distributions), we are required to report the fair market value (“FMV”) of the assets within your IRA to the IRS. The IRS definition of FMV is the price at which the asset would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell, and both having a reasonable knowledge of the relevant facts. For additional guidance to determine FMV, please refer to the Code and to the Treasury Regulations.

You must provide us with a credible valuation of your IRA assets in order for us to generate accurate IRS reporting. We may report the FMV of your IRA assets based on supporting documentation that you provide and that, in our sole discretion, we deem reasonable and applicable. For example, we may base our FMV report on a recent, impartial appraisal of commercial real estate that you provide from a competent professional. Or we may report the FMV of your interest in a closely held company based on the detailed assessment of a CPA who is accustomed to appraising such companies.

If you do not provide to us an acceptable IRA valuation when required, you agree that we may, but are not required to, seek a valuation determination. The expenses incurred in preparing such a valuation will be considered your IRA’s expense and may be debited from your IRA. If your IRA has insufficient liquid assets to pay these expenses, you may pay them yourself. Certain IRA reimbursements may be considered annual contributions. To ensure proper governmental reporting, you must inform us of any IRA expense that you pay for outside your IRA. If we determine the value of any asset in your IRA for recordkeeping or reporting purposes, we will use reasonable, good faith efforts. Illiquid assets can be difficult to value accurately, particularly without sometimes costly and time-consuming appraisals. Therefore, we neither guarantee the appropriateness of the appraisal techniques that we use, nor do we assume responsibility for the accuracy of the valuations obtained.

GENERAL INSTRUCTIONS

Section references are to the Internal Revenue Code unless otherwise noted.

PURPOSE OF FORM

Form 5305-A is a model custodial account agreement that meets the requirements of section 408(a). However, only Articles I through VII have been reviewed by the IRS. A Traditional individual retirement account (Traditional IRA) is established after the form is fully executed by both the individual (depositor) and the custodian. To make a regular contribution to a Traditional IRA for a year, the IRA must be established no later than the due date of the individual’s income tax return for the tax year (excluding extensions). This account must be created in the United States for the exclusive benefit of the depositor and his or her beneficiaries.

Do not file Form 5305-A with the IRS. Instead, keep it with your records.

For more information on IRAs, including the required disclosures the custodian must give the depositor, see Pub. 590-A, *Contributions to Individual Retirement Arrangements (IRAs)*, and Pub. 590-B, *Distributions from Individual Retirement Arrangements (IRAs)*.

DEFINITIONS

Custodian – The custodian must be a bank or savings and loan association, as defined in section 408(n), or any person who has the approval of the IRS to act as custodian.

Depositor – The depositor is the person who establishes the custodial account.

TRADITIONAL IRA FOR NONWORKING SPOUSE

Form 5305-A may be used to establish the IRA custodial account for a nonworking spouse.

Contributions to an IRA custodial account for a nonworking spouse must be made to a separate IRA custodial account established by the nonworking spouse.

SPECIFIC INSTRUCTIONS

Article IV – Distributions made under this article may be made in a single sum, periodic payment, or a combination of both. The distribution option should be reviewed in the year the depositor reaches age 70½ to ensure that the requirements of section 408(a)(6) have been met.

Article VIII – Article VIII and any that follow it may incorporate additional provisions that are agreed to by the depositor and custodian to complete the agreement. They may include, for example, definitions, investment powers, voting rights, exculpatory provisions, amendment and termination, removal of the custodian, custodian’s fees, state law requirements, beginning date of distributions, accepting only cash, treatment of excess contributions, prohibited transactions with the depositor, etc. Attach additional pages if necessary.

EXHIBIT “C”

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

DARRELL L. DEEM, et. al.,
Plaintiffs,

v.

TRACEY BARON, et. al.,
Defendants.

**MEMORANDUM DECISION
AND ORDER**

2:15-CV-00755-DS

District Judge David Sam

Defendants have filed yet another motion to dismiss, this time for lack of standing and/or for failure to join indispensable parties.¹ Defendants note that the plaintiffs are listed as plaintiffs individually and on behalf of their ROTH IRAs. Plaintiffs had previously submitted as exhibits to the Court a copy of a Promissory Note made payable to “American Pension Services, Inc. Administrator for David G. Law Roth IRA #11396;” and a Supplemental Loan Agreement between RenX Group, LLC, and “American Pension Services Inc., Administrator for David G. Law Roth IRA #11396” and “American pension Services, Inc., Administrator for Darrell L. Deem Roth IRA #14459.” Defendants argue that the party to these agreements was American Pension Services, as the custodian/administrator for the ROTH IRAs, and not Mr. Deem and Mr. and Mrs. Law. The Court disagrees.

Fed. R. of Civ. P. 17(a) states that “An action must be prosecuted in the name of the real party in interest.” The question before this court is who the real party in interest is. Defendants argue that American Pension Services, Inc., the administrator for the Roth IRAs is the real party

¹ Dkt. No. 19.

in interest. Defendants cite a handful of bankruptcy cases for the proposition that a Roth IRA is a trust created by the Internal Revenue Code, the income of which is treated in a special way. An individual person causes the ROTH IRA to be created and is usually declared to be its beneficiary. This individual appoints a custodian/administrator of the self-directed trust, in this case, American Pension Services, Inc. Defendants argue, without reference to any authority, that a ROTH IRA's actions/activities can only be carried out or affected by a "trustee," called a "custodian" or "administrator": "like all trusts, ROTH IRAs can only act by and through their duly appointed trustees/custodians/administrators," and "all actions taken by, and agreements entered into for and on behalf of, the ROTH IRA can only be done/executed by the properly appointed and acting custodian/administrator/trustee."² Defendants conclude that because Mr. Deem and Mr. and Mrs. Law are the beneficiaries of their respective trusts/ROTH IRAs, not the trustees/custodians/administrators of them, they have no legal authority to act for their ROTH IRAs, and they lack standing to bring the claims in this lawsuit.

Plaintiffs, on the other hand, point out some persuasive federal cases stating that a self-directed IRA is not a trust and is not to be treated like a trust.³ At least two federal cases have found that an owner of a self-directed IRA has standing to sue on behalf of his or her own IRA. In the New York case of *Vannest v. Sage, Ruddy & Co., Inc.*,⁴ a plaintiff sued his securities broker for fraud and related activities. The broker argued that Plaintiff could not recover because it was not he who had purchased the securities, but his self-directed IRA. The court held that Plaintiff was the true purchaser and so he had standing: "Because Vannest controlled the investment

² Dkt. No. 19, 5.

³ See *Lewis v. Delaware Charter Guarantee & Trust Co.*, 2015 WL 1476403 (E.D. N.Y. 2015).

⁴ 2015 WL 1476430 (E.D. N.Y. 2015)

decisions, he certainly was a purchaser/seller for all practical purposes. Investors in self-directed IRAs have standing as “purchasers/sellers” to assert claims under the securities laws.”⁵

The second federal case dealing with this issue, *FBO David Sweet IRA v. Taylor*,⁶ has a similar fact situation to this case. Plaintiff Sweet was the sole decision maker on all investments and actions on behalf of his IRA. Equity Trust Company (ETC), an independent company which was the holding company/administrator for the IRA, did not provide investment advice or related services. The court in *FBO David Sweet IRA* determined that “a Self-Directed IRA, like the one at issue here, is unique in that the owner or beneficiary of the IRA acts as a trustee for all intent and purposes. While the IRS and SEC require that all IRA’s be placed with a holding company that serves as a trustee or custodian of the account, it is the owner of the Self-Directed IRA who manages, directs, and controls the investments.”⁷ The court then found that for purposes of the case, “ETC served as merely a holding company while Sweet acted as trustee of his Self-Directed IRA. Accordingly, Sweet’s suit on behalf of David Sweet IRA is proper.”⁸

In the case before the court, the actual agreement between Plaintiff David Law, and the custodian, American Pension Services, clearly states that the owner, David Law, not the custodian, has sole responsibility for decisions. The custodian was to have “no responsibility.”⁹ Following the logic of the *Vannest* case and the *FBO David Sweet IRA* case, which this court finds compelling, the Plaintiffs, not the holder or custodian of the IRA are the true parties in interest. Since the custodian/holder has not been involved in the decision-making process, it lacks the knowledge of the facts which would allow it to bring this action.

⁵ *Vannest*, at 658.

⁶ 4 F.Supp.3d 1282 (E.D. Ala. 2014).

⁷ *FBO David Sweet IRA*, at 1285.

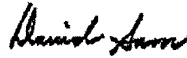
⁸ *Id.*

⁹ Dkt. No. 21-2, Exhibit 2

Since the Plaintiffs named in this action are the true and real parties in interest on every contract which form the basis of this action and since they are the ones most knowledgeable of all of the facts and circumstances surrounding those contracts, and since they are also the ones for whose benefit all of the transactions were performed, they are the appropriate parties to prosecute the case. For the above reasons, and for good cause appearing, the court hereby denies Defendants' Motion to Dismiss (A) For Lack of Standing and/or (B) for Failure to Join Indispensable Parties.¹⁰

DATED this 14th day of April, 2016.

BY THE COURT:



DAVID SAM

United States District Judge

¹⁰ Dkt. No. 19.

EXHIBIT “C”

EXHIBIT “D”

Steven D. Grierson

1 DAVID LIEBRADER, ESQ.
2 STATE BAR NO. 5048
3 THE LAW OFFICES OF DAVID LIEBRADER, APC
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5 LAS VEGAS, NV 89106
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7 Attorney for Plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 IN THE MATTER BETWEEN

) Case No. A-15-725246

11 Reva Waldo,

) Dept.: 16

12 PLAINTIFF,

) ORDER ON:

13 v.

) 1. PLAINTIFF'S MOTION
) FOR SUMMARY
) JUDGMENT

14 Ronald J. Robinson, Virtual Communications
15 Corporation, Retire Happy, LLC, Julie Minuskin
16 and DOES 1-10 and ROES 1-10, inclusively

) 2. PLAINTIFF'S MOTION
) FOR SUMMARY
) ADJUDICATION

17 DEFENDANTS

) 3. DEFENDANTS'
) MOTION TO DISMISS
) FOR FAILURE TO
) NAME INDISPENSIBLE
) PARTIES

4. DEFENDANT DAVIS'
MOTION TO DISMISS

18 ORDER ON MOTIONS

19 The following motions were considered by the court:

- 20 1. Plaintiff's motion for summary judgment against Defendant Virtual Communications
21 Corporation;
- 22 2. Plaintiff's motion for summary adjudication of issues;
- 23 3. Defendants Virtual Communications Corp., Alisa Davis and Ronald Robinson's
24 counter motion to dismiss Plaintiff's complaint for failure to name indispensable
25 parties;
- 26 4. Defendant Alisa Davis' motion to dismiss/motion for summary judgment/motion for

APR 16 2018

1 judgment on the pleadings.

2 The four motions were the subject of two hearings; one on March 8, 2018, the second
3 on April 5, 2018. Appearing for Plaintiff was David Liebrader; appearing for Defendants was
4 Harold Gewerter.

5
6 FINDINGS OF FACT; CONCLUSIONS OF LAW

7 After considering the briefs, oppositions, replies and supporting Declarations
8 submitted, as well as argument by counsel at the two hearings, the Court rules as follows:



- 9 1. Plaintiff entered into a valid, binding contract with Defendant Virtual
10 Communications Corporation. Based upon the sworn testimony of VCC's officers
11 Ronald Robinson and Vernon Rodriguez, VCC acknowledged that it is in default
12 under the terms of the promissory note. As a result Plaintiff's motion for summary
13 judgment against VCC is GRANTED.
- 14 2. Plaintiff raised the following issues in her motion for summary adjudication; (a) that
15 the VCC note is a security; (b) that the VCC Note was not registered nor exempt from
16 registration; (c) that VCC employed an unlicensed broker dealer to sell the VCC
17 Notes; and (d) that Ronald Robinson is a control person under the Nevada Securities
18 Act. Based upon the authorities cited by Plaintiff in her motion for summary
19 adjudication, including NRS 90.295 and State v. Friend, 40 P. 3d 436; 118 Nev. 115
20 (2002) and the certification from the Nevada Secretary of State, the Court Orders that
21 Plaintiff's motion for summary adjudication on the four issues raised is GRANTED.
- 22 3. Defendants' motion to dismiss for failure to name an indispensable party, specifically
23 Provident Trust Group was the subject of extensive briefing. In addition to the motion,
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25
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1 opposition and reply the court also asked for and received supplemental briefing from
2 the parties, as well as out of jurisdiction authorities lodged with the court by Plaintiff.
3 The issue of whether a self-directed IRA Custodian is a necessary party such that the
4 Plaintiff lacks standing to sue is an issue of first impression in Nevada. Based upon
5 the filings the Court finds that Provident Trust owed limited duties to Plaintiff and did
6 not direct, consent, approve or disapprove of Plaintiff's investment decisions in the
7 self-directed account. Instead, it was Plaintiff, the owner of the Provident Trust Group
8 custodial account who managed, directed and controlled the investments. See FBO
9 David Sweet IRA v. Taylor, 4 F. Supp. 3d 1282 (E.D. Ala. 2014). Because Plaintiff
10 was the sole decision maker on the account, and Provident Trust Group expressly, by
11 contract, declined to undertake any action to pursue remedies for default on the
12 investment, the Court finds that Provident Trust Group is not a necessary or
13 indispensable party and on the basis DENIES Defendant's motion.

- 14 4. The Court considered Defendant Alisa Davis' motion for summary judgment/motion
15 to dismiss/motion for judgment on the pleadings. The Court finds that Plaintiff has
16 plead sufficient material facts, including offering the sworn deposition testimony of
17 Ronald Robinson that contradicts the contentions raised in Davis' motion. Because
18 Ms. Davis' motion is contradicted by the sworn testimony of Mr. Robinson, the Court
19 rules that Ms. Davis' motion is DENIED.


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21 IT IS SO ORDERED:

22 Dated this 16th day of April, 2018

23 
24 Hon. Timothy Williams
25 District Court Judge
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Submitted by:


David Liebrader, Esq.
Attorney for Plaintiff

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7 *Attorneys for Debtor-in-Possession*
8 *Virtual Communications Corporation*
9

10
11 **UNITED STATES BANKRUPTCY COURT**
12 **DISTRICT OF NEVADA**

13 * * *

14 IN RE:

15 VIRTUAL COMMUNICATIONS
16 CORPORATION,

17 Debtor.

Case No. 18-12951-leb

Chapter 11

18
19
20 **DISCLOSURE STATEMENT FOR CHAPTER 11 PLAN OF REORGANIZATION FOR**
21 **VIRTUAL COMMUNICATIONS CORPORATION**
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business operations. Accordingly, it is unlikely that WinTech could be sold as a going concern through a chapter 7 liquidation of the Debtor.

A copy of WinTech's December 31, 2017 balance sheet is included in Exhibit B to the Disclosure Statement. Taking into account the assets and liabilities of WinTech, the Debtor believes that it is unlikely that it would receive any material distribution of proceeds from a liquidation of WinTech at this time.

2. Claims against Third Parties. The Debtor believes it holds viable claims against former officer and director, Ronald J. Robinson ("Robinson"), and possibly other parties arising from the misuse of proceeds from the Unsecured Notes and related matters. Robinson disputes such claims and denies that he is liable to the Debtor for any misuse of any proceeds from the Unsecured Notes. To date, the Debtor has chosen not to pursue any claim against Robinson (i) due to the high costs and uncertainty of litigation and (ii) because Robinson has agreed to allow WinTech to occupy and use space in a commercial building in which he holds an ownership interest on a rent free basis. The Debtor believes the market value of the free rent provided to WinTech by Robinson to be approximately \$10,000 per month. Although informal, the Debtor's management believes that the current arrangement with Robinson is preferable to litigation and would prefer that this arrangement continue for the foreseeable future should the Plan be confirmed.

In the event of a Chapter 7 liquidation, the Debtor believes that there is a substantial likelihood that a Chapter 7 Trustee would assert claims against Robinson and possibly others arising from the misuse of proceeds from the Unsecured Notes. Given the inherent uncertainty and expense of litigation, the Debtor believes that \$100,000 is a fair and reasonable estimate of the net amount a Chapter 7 Trustee might ultimately recover from the pursuit of such claims. However, it is possible that the pursuit of such claims could yield significantly more or significantly less than \$100,000.

3. Secured Claim of Julie Minushkin. The Claim of Julie Minushkin is secured by certain shares of Common Stock in the Debtor that were pledged as collateral for an obligation owed by the Debtor under a settlement agreement. In the event of a Chapter 7 liquidation, such shares would be of little or no value. Accordingly, this Claim is treated as unsecured for purposes of this Liquidation Analysis.

4. Dependence on Unaudited Financial Statements. This Liquidation Analysis contains estimates that are still under review and it remains subject to further legal and accounting analysis.

EXHIBIT “E”

Steven D. Grierson

1 DAVID LIEBRADER, ESQ.
2 STATE BAR NO. 5048
3 THE LAW OFFICES OF DAVID LIEBRADER, APC
4 601 S. RANCHO DR. STE. D-29
5 LAS VEGAS, NV 89106
6 PH: (702) 380-3131
7 Attorney for Plaintiffs

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 IN THE MATTER BETWEEN

11 Steven A. Hotchkiss,

12 PLAINTIFF,

13 v.

14 Ronald J. Robinson, Vernon Rodriguez, Frank
15 Yoder, Alisa Davis and DOES 1-10 and ROES 1-
16 10, inclusively

17 DEFENDANTS

18 Anthony White, Robin Suntheimer, Troy
19 Suntheimer, Stephens Ghesquiere, Jackie Stone,
20 Gayle Chany, Kendall Smith, Gabriele
21 Lavermicocca and Robert Kaiser,

22 PLAINTIFFS

23 v.

24 Ronald J. Robinson, Vernon Rodriguez, Virtual
25 Communications Corporation, Frank Yoder, Alisa
26 Davis and DOES 1-10 and ROES 1-10, inclusively

) Case No. A-17-762264-C

) Dept.: 8

) STATEMENT OF DAMAGES
) NRS §90.660

) CONSOLIDATED WITH

) Case No. A-17-763003-C

27 **STATEMENT OF DAMAGES NRS §90.660**

28 Plaintiffs submit this statement of damages on their Securities Law claims against Vernon
29 Rodriguez and Ronald Robinson pursuant to NRS §90.660:

Plaintiff	Amount invested	Date of investment	Legal Interest	Total Principal and Int.	.30 Attorney's fees	Total NRS \$90.660 Damages
Hotchkiss	\$75,000	11/2013	\$20,250	\$95,250	\$28,575	\$123,825
White	\$20,000	1/2014	\$5,525	\$25,525	\$7,658	\$33,183
Troy Suntheimer	\$52,000	11/2013	\$15,405	\$67,405	\$20,222	\$87,627
Robin Suntheimer	\$35,000	10/2013	\$10,260	\$45,260	\$13,578	\$58,838
Ghesquiere	\$66,000	4/2014	\$19,059	\$85,059	\$25,518	\$110,577
Lavermicocca	\$100,000	9/2014	\$30,438	\$130,438	\$39,131	\$169,569
Stone	\$35,000	1/2013	\$8,357	\$43,357	\$13,007	\$56,364
Chany	\$59,000	9/2014	\$18,217	\$77,217	\$23,165	\$100,382
Smith	\$28,000	12/2014	\$8,698	\$36,698	\$11,009	\$47,707
Kaiser1	\$62,000	1/2013	\$16,432	\$78,432	\$23,530	\$101,962
Kaiser2	\$42,000	10/2013	\$12,129	\$54,129	\$16,239	\$70,368
Total	\$574,000					\$960,402

TABLE OF INTEREST RECEIVED AND DUE

Plaintiff	Total Statutory Interest NRS §90.660	Interest Received from VCC @ .09 from DOP - Jan, 15	Net Statutory Interest Owed
Hotchkiss	\$28,688	\$8,438	\$20,250
White	\$7,475	\$1,950	\$5,525
Troy Suntheimer	\$21,255	\$5,850	\$15,405
Robin Suntheimer	\$14,460	\$4,200	\$10,260
Ghesquiere	\$23,514	\$4,455	\$19,059
Lavermicocca	\$33,438	\$3,000	\$30,438
Stone	\$14,920	\$6,563	\$8,357
Chany	\$19,987	\$1,770	\$18,217
Smith	\$9,118	\$420	\$8,698
Kaiser 1	\$28,057	\$11,625	\$16,432
Kaiser 2	\$17,169	\$5,040	\$12,129

Legal Interest Rate

Begin Date	End Date	Interest Rate
January 1, 2020	- July 1, 2020	6.75
July 1, 2019	- December 31, 2019	7.5
January 1, 2019	- June 30, 2019	7.5
July 1, 2018	- December 31, 2018	7
January 1, 2018	June 30, 2018	6.5
July 1, 2017	- December 31, 2017	6.25
January 1, 2017	June 30, 2017	5.75
July 1, 2016	- December 31, 2016	5.5
January 1, 2016	June 30, 2016	5.5
July 1, 2015	December 31, 2015	5.25
January 1, 2015	June 30, 2015	5.25
July 1, 2014	December 31, 2014	5.25
January 1, 2014	June 30, 2014	5.25
July 1, 2013	December 31, 2013	5.25
January 1, 2013	June 30, 2013	5.25
July 1, 2012	December 31, 2012	5.25

1 January 1, 2012 June 30, 2012 5.25

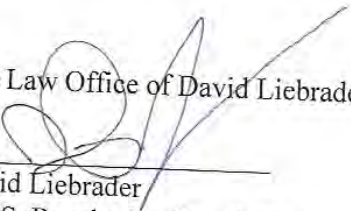
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3 *"When no rate of interest is provided by contract, or otherwise by law, or specified in the*
4 *judgment, the judgment draws interest at a rate equal to the prime rate at the largest bank in*
5 *Nevada as ascertained by the commissioner of financial institutions on January 1 or July 1,*
6 *as the case may be, immediately preceding the date of judgment, plus 2 percent. The rate must*
7 *be adjusted accordingly on each January 1 and July 1 thereafter until the judgment is*
8 *satisfied."*

9
10 NRS 99.040 (See also) NRS 17.130, NRS 37.175, , NRS 108.237, NRS 147.220, NRS
11 233.170 and NRS 645.84:

12 Dated: February 22, 2020

13 Respectfully submitted,

14
15 The Law Office of David Liebrader, Inc.

16 By: 
17 David Liebrader
18 601 S. Rancho Dr. Ste. D-29
19 Las Vegas, NV 89106
20 Attorney for Plaintiff
21
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23
24
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26

CERTIFICATE OF MAILING

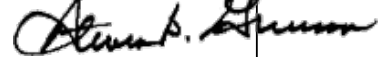
I hereby certify that on the 22 day of February, 2020, I mailed a copy of the foregoing Plaintiff's updated

PLAINTIFF'S STATEMENT OF DAMAGES

in a sealed envelope, to the following counsel of record and that postage was fully prepaid thereon


An Employee of The Law Office of David Liebrader

Harold Gewerter, Esq.
Gewerter Law Office
1212 Casino Center Boulevard
Las Vegas, NV 89104
Attorney for Defendants



1 **RTRAN**

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4
5 **DISTRICT COURT**
6 **CLARK COUNTY, NEVADA**

7
8 **STEVEN HOTCHKISS,**
9 **Plaintiff,**

CASE#: A-20-762264-C
DEPT. IX

10 **vs.**

11 **RONALD ROBINSON,**
12 **Respondent,**

13
14 **BEFORE THE HONORABLE CRISTINA D. SILVA,**
15 **DISTRICT COURT JUDGE**
16 **MONDAY, FEBRUARY 24, 2020**

17 ***RECORDER'S TRANSCRIPT OF***
18 ***BENCH TRIAL - DAY 1***

19 **APPEARANCES:**

20 **For the Plaintiff: DAVID LIEBRADER, ESQ.**

21
22 **For the Defendant: HAROLD P. GEWERTER, ESQ.**

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25 **RECORDED BY: GINA VILLANI, COURT RECORDER**

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Las Vegas, Nevada, Monday, February 24, 2020

[Case called at 11:06 a.m.]

THE COURT: A17-62 -- sorry, 762264-C, in the matter of Hotchkiss v. Robinson, et al. Everyone maybe seated. I understand we potentially are having some technical difficulties this morning?

THE RECORDER: Yes.

THE COURT: That -- it never fails. I tell my -- every time I have a jury that there's bound to be a technical failure. So why would it be any different for a bench trial. But I figure while we're waiting for IT to come up, I would come out here and first off say good morning. I apologize for the delay. Every time I have a short calendar it ends up taking longer than it should. But I also wanted to see if there's anything we could address before we get started with the actual trial or do we need the Elmo?

MR. LIEBRADER: Not for -- I have -- we have nothing --

THE COURT: Okay.

MR. LIEBRADER: -- preliminary, Your Honor.

THE COURT: All right.

MR. GEWERTER: No, we have a --

THE COURT: No, don't do that. Come on in. We're just going to be chatting if you don't mind playing with that while we're chatting.

Go ahead.

MR. GEWERTER: The issue is we had stipulated to some

1 evidence coming in.

2 THE COURT: Uh-huh.

3 MR. GEWERTER: Now I understand that they going to have
4 live witnesses again to talk about the documents we already stipulated
5 to. So I'm not sure exactly where we're going to go, because we
6 stipulated to have the promissory notes come in. We stipulated to the
7 date there was a default. That's not the issue. Those facts are not in
8 dispute. The -- what's in dispute is what happens afterwards, the law on
9 this case.

10 THE COURT: So if I understand that correctly then, the
11 purpose of having the live witnesses is to dispute the authenticity of
12 those documents?

13 MR. GEWERTER: No, we're not going to --

14 THE COURT: -- is that what it is?

15 MR. GEWERTER: -- we're not -- they want to call a plaintiff.
16 We already stipulated that the document was signed by the company.
17 That's not an issue.

18 THE COURT: Okay. So --

19 MR. LIEBRADER: And our position, we just want to call Mr.
20 Hotchkiss who is the lead plaintiff. The stipulation was we may call
21 witnesses. We didn't say we couldn't. But I appreciate what he's
22 saying. Maybe 10 to 15 minutes, just to put a face to -- you know, these
23 are real victims in this case and real purchasers.

24 MR. GEWERTER: Well, I object to the word victim here but
25 yes.

1 MR. LIEBRADER: Well, -- and Mr. --

2 THE COURT: This is just attorneys talking here, so that's
3 okay. So okay, so you would want the person to testify regarding what
4 happened to them. I'm just --

5 MR. LIEBRADER: Yeah, that this is -- note, yes, you know,
6 he's come all the way out here, the impact on his life of losing this
7 money. This was retirement money.

8 MR. GEWERTER: See that's very issue. That's not pled in
9 this case. There's no allegation of emotional distress. There's no
10 allegation of anything that even comes close what happened in his life.
11 This basically is nothing more than a breach of contract on a promissory
12 note where the company's filed bankruptcy and in exchange the debt got
13 converted to equity. And then the question is well how about the
14 guarantee. That's a matter of law. And that's the case, Your Honor.

15 Now we're going to talk about what happened to his life.
16 That's just undue prejudice. And the only thing that happens within the
17 company itself is undue prejudice. They want to bring in one of the
18 former owners, stockholders, directors of the company come in and say
19 how he and Mr. Robinson did not get along. They have accounting
20 disputes. That's not the issue. The issue was this man and the plaintiffs
21 asked -- made and investment with a promissory note and what
22 happened to the investment. The documents speak for themselves.
23 There's no need for live witnesses here, Your Honor.

24 And they're going to do -- it's just undue prejudice to have Mr.
25 Yoder come in, who is a defendant and to have the plaintiff come in and

1 talk about what happened to his life.

2 MR. LIEBRADER: Well we get --

3 MR. GEWERTER: Whatever happened I'm sorry. But you --
4 that's not part of this case.

5 THE COURT: All right. So I will allow limited testimony. I
6 don't think we need to go into a narrative regarding every detail of one's
7 life. Perhaps to place some of the information into context, I will allow
8 limited testimony. And if we start to get too far afield or it becomes
9 irrelevant, I will certainly stop that. But I will allow limited testimony.

10 MR. LIEBRADER: Understood.

11 MR. GEWERTER: That's fine, Your Honor.

12 THE COURT: All right.

13 MR. GEWERTER: Thank you.

14 THE COURT: All right. Anything else that we need to
15 address?

16 MR. GEWERTER: Your Honor, there's one other issue here
17 maybe.

18 THE COURT: Yes.

19 MR. GEWERTER: This case bounced around to a couple
20 different departments as you probably saw three or four. And one of the
21 issues in this case, if they're going to try and prove that this was a
22 security. And therefore as a security, there's certain remedies that
23 they're asking for. Where are my -- one second, Your Honor.

24 THE COURT: Right, they say it's a violation --

25 MR. GEWERTER: Go ahead, I'm sorry.

1 THE COURT: -- of NRS 90.460.

2 MR. GEWERTER: There was an order that was entered in
3 this case entered by the Honorable Doug Smith. I'm not sure if the
4 Court has seen this. It was entered on 2/25/2019. I just want to bring
5 this to the Court's attention because the way they bootstrap Vern
6 Rodriguez into this case, which we think is erroneous, is because they
7 said it's a security. In order to have a control person you first need a
8 security. Judge Smith ruled on that very issue. If I can approach that
9 bench, I have extra copies.

10 MR. LIEBRADER: Your Honor, that's just not the case.

11 MR. GEWERTER: Well, --

12 MR. LIEBRADER: He just denied our motion for summary --

13 THE COURT: Summary judgment.

14 MR. LIEBRADER: -- adjudication.

15 MR. GEWERTER: But let me -- he also has findings in here.
16 I think the findings I think would be good for the Court to have at its
17 disposal. That's all I'm asking.

18 THE COURT: I think I have that up. And so paragraph 8 of
19 that order says the remaining issue which plaintiff seeks summary
20 adjudication, whether the VCC note was sold in violation of NRS 90.460
21 is moot as it relies on this Court's granting of summary adjudication on
22 the issue of whether VCC --

23 MR. GEWERTER: Right, that --

24 THE COURT: -- note was a security.

25 MR. GEWERTER: -- they brought a motion to have the Court

1 rule that this was a security. The Judge did not. So as it stands right
2 now the ruling of this Court is there's no security issue here.

3 MR. LIEBRADER: No, they didn't --

4 THE COURT: No. That's not how I read that.

5 MR. LIEBRADER: -- make a ruling. Me neither.

6 THE COURT: I actually read this order --

7 MR. GEWERTER: Well, it says it's moot.

8 THE COURT: Well, he's says it moot because it would have
9 to have relied on the underlying request for summary judgment. And
10 because he denied that, he then doesn't reach the issue, the ultimate
11 question as to whether or not it qualifies as a note or not. So that is still
12 an issue for this Court to determine.

13 MR. GEWERTER: That's fine, Your Honor.

14 THE COURT: All right. Well that -- I had put a notebook
15 together for this trial and I of course left it back there thinking it would
16 take more time for IT get up here and they showed up quickly. So give
17 me one moment. I'll be right back.

18 [Brief pause]

19 THE COURT: All right. There we -- are we good?

20 MR. LIEBRADER: Sorry. Thank you.

21 THE COURT: No, no, it's okay. It happens every time. And I
22 think I'll disappointed the day that it doesn't happen when I'm about to
23 start a trial. I won't know what to do with myself.

24 All right. So invite opening statements but there doesn't have
25 to be opening statements do -- would either or both party like to give an

1 opening statement?

2 MR. LIEBRADER: Yes, for the plaintiff, Your Honor.

3 THE COURT: Okay.

4 MR. GEWERTER: Yes, Your Honor.

5 THE COURT: All right. You know what I think -- oh, well he
6 did switch them. At first the signs were backwards, but they've been
7 switched. Okay. Good. Then let me get my notes ready to go here.
8 And please pardon me I do electronic notes. When you're ready.

9 **PLAINTIFF'S OPENING STATMENT**

10 MR. LIEBRADER: Thank you, Your Honor. So thank you for
11 your willingness to hear this case. And parties have briefed the issues
12 fairly well. There are number of plaintiffs in this case. As you know, this
13 case was consolidated. Mr. Hotchkiss was the original plaintiff. There
14 was another matter involving the same promissory notes issued by
15 Virtual Communications that was consolidated to this one. That name of
16 the plaintiffs are Mr. Hotchkiss, Steve Ghesquiere, Anthony White, the
17 Suntheimers, Troy and Robin, Gayle Chany, Jackie Stone, Robert
18 Kaiser, Kendall Smith, and Gabriel Lavermicocca. All of these plaintiffs
19 live out of state so they're not able to be here.

20 The defendant is -- the defendants were a Virtual
21 Communications corporation. That's the company that issued the
22 promissory notes. They are no longer a party, because in a companion
23 case that, which we'll talk about the Waldo Communications, which was
24 decided about two years ago. There was a number of findings. And
25 once the Judge -- Judge Williams found that the notes were securities

1 and that virtual -- VCC is an abbreviation, was in default they ran into
2 Bankruptcy Court. And so they were -- the case against them was
3 stayed. And since there's been a reorganization and so they are no
4 longer a party.

5 So the remaining parties and Mr. Robinson, who is the
6 chairman of VCC and he owns the shares through his Nevada asset
7 protection trust, the Scotsman's Trust --

8 MR. GEWERTER: Your Honor, I'm going to object.

9 MR. LIEBRADER: -- and Vern Rodriguez.

10 MR. GEWERTER: No, Your Honor, I'm going to object.

11 THE COURT: Hold on. What is the objection?

12 MR. GEWERTER: The Scotsman's Trust is not a party to this
13 thing. He's trying to an offset -- a collection matter. That's totally
14 improper to bring in a party that's not a party to this case.

15 MR. LIEBRADER: But the fact is that --

16 THE COURT: All right. So what attorneys say in opening and
17 closing statements is not evidence but --

18 MR. GEWERTER: I understand, but we're going far afield
19 from this case. We'll be here for two weeks. The fact is he sued Mr.
20 Robinson, period. Now whether he owns it in a family trust or he owns it
21 in the Cayman Islands, which he doesn't. That's not an issue before this
22 Court.

23 MR. LIEBRADER: The fact is that he does own the shares --

24 THE COURT: Well I do need some background in order to
25 get some more information. So I'm going to overrule the objection. You

1 can go ahead.

2 MR. LIEBRADER: Mr. Robinson still owns the shares through
3 the Scotsman's trust, which will come out, which is what he represented
4 in the Bankruptcy Court.

5 And Mr. Rodriguez, who was the chief financial officer of VCC.
6 And then we have these two other wild card defendants in this case. We
7 have Alisa Davis who is Mr. Robinson's granddaughter, who he accused
8 of essentially defrauding the investors by using a promissory note
9 without his permission which he then gave to Retire Happy, which was
10 an unregistered broker/dealer who went out in the community and
11 [indiscernible] raised the money. And so he was said well Ms. Davis
12 didn't have the authority to do that.

13 In addition, he also named another defendant, Frank Yoder,
14 who he claimed prepared a PowerPoint presentation that contained a
15 guarantee, Mr. Robinson's guarantee, the very issue that we're talking
16 about here. At a deposition in a prior case, I asked Mr. Robinson well
17 did Mr. Yoder do this without your permission, put the guarantee in the
18 contract? He said absolutely he did. I said well you know we're going to
19 have to amend the complaint and bring Mr. Yoder in. He didn't care. So
20 that's what we're dealing with here. So they're in the case.

21 What are the undisputed facts? We heard Mr. Gewerter
22 concede that yes, VCC is in default. There was \$574,000 in identical
23 promissory notes that were issued by VCC between January 2013 and
24 December 2014. All the notes bear the signature of Ron Robinson as
25 guarantor and on behalf of VCC. There's no dispute that VCC paid 9%

1 interest from the date all of these plaintiffs purchased until January of
2 2015. In February of 2015 VCC defaulted.

3 Another undisputed fact, on May 3rd, 2018, Judge Williams
4 ruled that VCC was in breach of contract to another plaintiff.

5 MR. GEWERTER: Your Honor, I'm going to object what
6 happened in Judge Williams' case. Because if that's the case, I'll bring
7 in all the things that he ruled in our favor. We're going to retry that case
8 which is on appeal to the Supreme Court.

9 THE COURT: I know it's on appeal and I'll just let both parties
10 know that I did read a significant amount of the -- I read Judge Williams
11 findings, but also read through that docket to get a good idea of what
12 this case was about.

13 MR. GEWERTER: And there's an opening brief to the
14 Supreme Court. There's two issues pending.

15 THE COURT: So I know it's pending before the Supreme
16 Court, so but --

17 MR. GEWERTER: There's two issues of law on that fact.

18 THE COURT: I'm going to be focusing on the facts of this
19 case, but so I already have a background --

20 MR. GEWERTER: Thank you.

21 THE COURT: -- regarding that.

22 MR. LIEBRADER: And really I mentioned it is because VCC
23 filed for bankruptcy after that. So what are the issues to decide? Is Mr.
24 Robinson -- it's really simple. Is Mr. Robinson liable as a guarantor of
25 the promissory notes? Are the promissory notes securities? And are

1 Mr. Robinson and Mr. Rodriguez liable as control people?

2 So here's the personal guarantee and Mr. Robinson signed
3 off on it. It appears from all litigating this for a couple of years that
4 everyone is in agreement that these notes were signed in blank for
5 convenience and then they were given to the Retire Happy to raise
6 money. And they were identical, the notes were identical in all respects
7 except for the spot where the individual plaintiff would -- you know, name
8 would be entered, the specific amount and the date. Other than that,
9 everything was the same, including Mr. Robinson's guarantee.

10 So what's the proof that Mr. Robinson intended to guarantee
11 the notes? Well there's three separate PowerPoint presentations that
12 were prepared that he had input in. Mr. Rodriguez had input in. They
13 were spanning two years, all that which say that Mr. Robinson is the
14 guarantor. These are documents that came from VCC, the company
15 that he was chairman of the board. There's also an audited financial
16 statement that says Mr. Robinson was the guarantor.

17 There's two filings with securities regulators. After they
18 defaulted they looked to raise more money to pay off these plaintiffs, so
19 they prepared a private placement memorandum and offering circular.
20 This will be in evidence. Each one of those the company disclosed to
21 the world and to future investors that Mr. Robinson was the guarantor,
22 so there's that.

23 There's a fund raising contract with Retire Happy, which says
24 that Mr. Robinson was going to be guaranteeing these notes. There's a
25 contract between VCC and Mr. Robinson, which Mr. Rodriguez signed

1 off on that said that Mr. Robinson would be responsible and that in
2 exchange for him making the payments to the investors he would
3 receive some additional shares of VCC.

4 And lastly, there's an email from Mr. Robinson claiming a 17
5 million dollar net worth that he was prepared to discuss with potential
6 investors to show them that he was good.

7 So again Mr. Davis -- Mr. Yoder and Ms. Davis probably
8 shouldn't be in the case. Ms. -- Mr. Gewerter and I have been trying to
9 work out a deal with a stipulation. Essentially it's this, is that if Ms. Davis
10 comes in and testifies to the same extent that she did in the *Waldo* case,
11 she will be dismissed. In other words, if she admits as she did in that
12 case the Mr. Robinson authorized the use of the pre-signed notes she
13 will be dismissed. If that testimony differs, we'll have to deal with that at
14 a different time.

15 So I won't -- I understand, Your Honor, you don't want to talk
16 about Ronald Robinson. You looked at it. So here's this guarantee.

17 Here's the original, one of the documents you'll see in
18 evidence. This was a document between Retire Happy and Virtual
19 Communications in December of 2012 right before -- this is essentially
20 VCC hiring Retire Happy to go out and raise money for the company.
21 And it says pretty clearly that the company authorizes, consultant,
22 company being VCC, consultant being Retire Happy, to identify potential
23 investors interested in investing in the company's promissory note with
24 personal guarantee. A couple of lines down it mentions it again,
25 promissory notes with personal guarantee. Who signs off on this

1 document on the bottom? Ron Robinson.

2 So there's another agreement that it -- between VCC and Mr.
3 Robinson, where Mr. Robinson agreed and signed off. Mr. Rodriguez
4 signed, Mr. Robinson signed. RJ Robinson will be responsible for
5 payment to the investors. He will be responsible for payment to the
6 investors, utilizing his financial statement and credit rating to persuade
7 the investors to make this investment. It's right there at the scene of the
8 crime. I can't believe that we are here and he is denying this.

9 There is another important document here where it's in
10 December 10th of 2012, with the negotiations between Virtual
11 Communications and Retire Happy. How is this all going to go down?
12 Retire Happy is run by Julie Minuskin. And so this is Mr. Robinson
13 writing to her: We are in complete agreement with our communications
14 with your investors. Vern will be the direct contact. So that's important,
15 because they have taken a position that Mr. Rodriguez wasn't involved
16 that he wasn't a control person, that he wasn't materially aiding and
17 offering. But here's Mr. Robinson saying that Mr. Rodriguez will be the
18 direct contact with the investors.

19 And so, he goes on, on the bottom. I would be happy to meet
20 with them and show them my accountant's prepared current financial
21 statement. My current net worth is \$17,699,000, which is represented in
22 cash and equities both real and personal, Ron Robinson. Why in the
23 world do you represent that to the person who is raising the money
24 unless you want the investors to feel comfortable that you have the
25 money to honor your personal guarantee?

1 This is one of the audited financial statements. It's December
2 31st, 2015. What does it say? The note -- it identifies the note as
3 companies has entered into a series of notes. It goes on to say, last
4 sentence, the notes also carry a late fee of 5% after a 5-day grace
5 period and are conditionally guaranteed by an officer of the company.
6 That is VCC representing to the world that Mr. Robinson is the
7 guarantor.

8 Why is Ms. Davis in this case? Because during his deposition
9 in another matter he claimed that Ms. Davis acted without his authority
10 by sending the signed promissory note to Ms. Minuskin of Retire Happy.
11 Well here is a document and this is essentially what blew up in their face
12 in the *Waldo* case. Ms. Davis, who is Alisa Q., writing to Julie Minuskin:
13 For the sake of not having to deal with different schedules, attached is a
14 doc X promissory note for VCC with the initials and signatures.

15 And I ask -- and I'll ask Ms. Davis again on the stand here, did
16 you do this of your own volition? Did you get Mr. Robinson's
17 authorization, his initials and signatures? And she said yes, I sent it to
18 him. He completed it and sent it back to me and there you go. Again
19 that was testimony on the penalty of perjury at a deposition that Mr.
20 Robinson gave.

21 So what other proof the notes are securities? Well VCC
22 repeatedly refers to the notes as securities in three separate
23 PowerPoints, it cites that -- make cites reference to the 1933 and 1934
24 Securities Act. Why do you do that if you're not -- you don't understand
25 that you're selling securities? Clearly meets every element of the *State*

1 *versus Friend* test, the motivations of the buyers and sellers to enter in
2 this transaction was for investment purposes.

3 In what manner was the note made available to the public?
4 Through a general solicitation a general offering out -- wasn't just
5 concentrated in Nevada. They were dialing for dollars. We have Mr.
6 Hotchkiss who was living in Nebraska at the time. We have people in
7 Florida. So Retire Happy was out there in the community nationwide
8 recruiting investors.

9 Did the purchasers view the note as an investment? Clearly
10 they did. VCC referred to it repeatedly as an investment. And is there a
11 need for regulatory protections? That kind of speaks to would this
12 investment be regulated by insurance, by the real estate division, the
13 securities division. Clearly as a security it would be regulated by the
14 security division.

15 We really never argued the *Howey* test and it's very clear that
16 this is an investment of money in a common enterprise with the
17 expectation of profits from the efforts of others, plain as day. One of the
18 things I asked Mr. Robinson at trial in the *Waldo* case is did you ever
19 register it? No. Did you file an exemption from registration? No. So
20 that -- you know, that's we have that under oath testimony already. And
21 we have the findings from Judge Williams.

22 And so here just the -- you know, here's the representations
23 they made in the PowerPoint presentations. This is them putting it
24 together. They called it securities, terms of securities. And just for -- on
25 the bottom arrow it just shows that this was -- this PowerPoint

1 presentation was a different one, June 15th 2014 is the termination date.
2 Here's the next one, securities, the term of securities, termination date
3 18 months from the promissory note execution. And lastly, the third
4 presentation, they're calling it securities, the terms of the securities and
5 the termination date again is different.

6 Prior to the time that this PowerPoint presentation was being
7 put together Mr. Robinson -- well Mr. Robinson said that he had no idea
8 that his personal guarantee was being used, didn't have anything to do
9 with the PowerPoint presentation being put together. Well here's
10 communications between Mr. Yoder and Mr. Robinson, and they again
11 they're talk -- it's December 17th of 2012, prior to the time they started
12 raising money, and Mr. Robinson making suggestions to Mr. Yoder on
13 what to put in, including that the investments were being offered
14 pursuant to Rule 505 of Reg D of the Securities Act of 1933. More proof
15 that these are -- they themselves consider it to be securities.

16 What's the liability under the Securities Act, 90.460, it's
17 unlawful for a person to offer or sell any security in this state unless the
18 security is registered or the security or transaction is exempt under this
19 chapter. Person obviously means a corporation and there is no
20 exemption -- interesting enough, in neither the *White* case which was
21 merged into this one, or the *Hotchkiss* case have they even alleged as
22 an affirmative defense that there's an exemption. Haven't argued it, they
23 didn't argue it in their pleadings in their pretrial briefs and it's too late at
24 this point. So there is no -- and there isn't -- the reason they did is
25 because there's no available exemption.

1 And so the liability attaches not just to the corporation, but to --
2 oh excuse me, the liability is essentially you get your money back. You
3 get interest at the legal rate and you get reasonable attorney's fees.
4 And that is under 90.660, the civil liability section.

5 Control person, a person directly or indirectly controls another
6 person who is liable under subsection (1) and that would be 90.460
7 which is the unregistered securities. A partner, officer, or director of the
8 person liable, clearly Mr. Rodriguez and Mr. Robinson fit those
9 definitions, is liable jointly and severally with and to the same extent as
10 the other person. And that's what Judge Williams found.

11 Why do I say that they're control people? Again here is an
12 offering memorandum that they put together in 2015. Well how do they
13 describe Mr. Robinson? Ron -- this is regarding VCC, Ron Robinson is
14 the company's chairman of the board. He's held this position since 2012
15 and is in charge of all policy and operations of the company. Sounds
16 like a control person to me. Vern Rodriguez, Chief Financial officer.
17 Ven Rodriguez is the company's Chief Financial Officer. He has a
18 background in sales, marketing, and accounting strategies, and systems
19 for financial services. He has held this position since 2012 and is in
20 charge of financial policy and financial records of the company, so
21 clearly another control person.

22 I don't know how they get around the guarantee but in the
23 event for whatever they -- Mr. Robinson is going to come in here and
24 testify today that he didn't know all this money was being raised and Ms.
25 Davis was acting without his authority. He ratified it. They received the

1 money. He -- Robinson was responsible for all the policies and
2 procedures of the company. He was the chairman of the board. He was
3 in charge of supervising Ms. Davis. He knew that Retire Happy was
4 continuing to raise money and he knew they were doing that with the
5 use of this blank pre-signed note. He knew money was coming into the
6 company. He knew -- the interesting thing about this case and we didn't
7 really allege it, but this was a Ponzi scheme, because they were --

8 MR. GEWERTER: Your Honor, I'm going to object.

9 MR. LIEBRADER: Mr. Yoder it going to testify.

10 MR. GEWERTER: Your Honor, no. If you don't allege it you
11 can't argue it.

12 MR. LIEBRADER: Mr. -- well --

13 MR. GEWERTER: Your Honor, I object to this whole line of --

14 MR. LIEBRADER: I'm just describing --

15 THE COURT: Well again, what attorneys say is not evidence.
16 And so I'm going to listen to opening statements and you'll have an
17 opportunity to give yours if you still wish.

18 MR. LIEBRADER: So what was happening --

19 MR. GEWERTER: Your Honor, I understand that but we're
20 getting false statements now.

21 MR. LIEBRADER: No.

22 MR. GEWERTER: I don't allege it but this is really what
23 happened. I understand this is a bench trial, but it's still improper
24 argument even for an opening.

25 MR. LIEBRADER: So let me --

1 THE COURT: All right. So you're objection is noted. I can't
2 rule one way or the other, because I don't have the information in front of
3 me. You're welcome to raise that again as an issue later.

4 MR. LIEBRADER: One of the things that we'll establish in this
5 case is the reason that VCC stopped paying the interest is because they
6 ran out of money. And they were never really making any money and
7 they were paying the investors with new money that was being raised.
8 And the money that they weren't paying the investors that was being
9 raised, 2 million dollars of which was taken out of the company by Mr.
10 Robinson to run his other businesses. Mr. Yoder will come in here and
11 testify tomorrow as to that fact. And so, Mr. Robinson took no steps to
12 stop to fund raise. In any event, it's a -- he ratified every single one of
13 these transactions with him as the guarantor.

14 So why did VCC default? They raised over 4 million dollars
15 from January 2013 to December 2014. The company was not profitable
16 during this period. In February 2015 they run out of money. They stop
17 paying interest. Mr. Yoder will testify that the funds raised in the offering
18 were used to pay interest to prior investors. They did an internal audit,
19 the Yoder brothers. So there was Mike -- there was Frank Yoder, who is
20 a defendant in this case, and his brother Mike Yoder. And they were
21 kind of the brains behind the technology. Mr. Rodriguez and Mr.
22 Robinson were the financing arm.

23 And so the Yoders realize, where's all this money? We've
24 been raising all this money and they didn't have it. So they -- an audit
25 was done, an informal audit. I think Mr. Yoder will testify a CPA got

1 involved. Anyways, an audit was prepared and it was discovered that \$2
2 million was missing from the offering.

3 And so the interesting thing is that VCC alleged in their own
4 bankruptcy filing that they have viable claims against Mr. Robinson
5 arising from the misuse of proceeds from the promissory note offering.
6 So here's a copy from the bankruptcy filing. VCC said that about Mr.
7 Robertson, about the CEO. Paragraph two, the debtor believes it hold
8 viable claims against former officer and director Ron Robinson and
9 possibly other parties arising from the misuse of proceeds from the
10 unsecured notes and related matters. So that's what happened to the
11 money.

12 What's the --

13 MR. GEWERTER: Your Honor, again I object. That was
14 never pursued in the bankruptcy or --

15 MR. LIEBRADER: That was VCC saying that about Mr.
16 Robinson.

17 MR. GEWERTER: I could say --

18 THE COURT: Okay. The objection is -- I'm not sure of the
19 legal basis for the objection, so it's noted.

20 MR. GEWERTER: Well the objection is there being a non-
21 relevant inadmissible argument in opening argument, Your Honor. This
22 cannot come in.

23 THE COURT: How is it inadmissible?

24 MR. GEWERTER: How is it inadmissible?

25 THE COURT: How is it inadmissible?

1 MR. GEWERTER: Because neither is part of the pleadings.

2 MR. LIEBRADER: Why did you run out of money VCC?

3 MR. GEWERTER: I'm not here to argue with Mr. Liebrader.

4 MR. LIEBRADER: I'm just saying, I'm gonna ask Mr.

5 Robinson --

6 THE COURT: All right, counsel, we're not going to have an
7 argument back and forth. All comments will be directed to the Court
8 going forward. I want to be clear on that.

9 Two, I don't think it's improper, so I'm going to overrule the
10 objection. This is argument. If it is not relevant, then the -- that will play
11 itself out during the course of the trial. And even if it wasn't in the
12 pleading itself, it doesn't mean that evidence supporting what is in the
13 pleadings can't be set forth during the trial. You may continue.

14 MR. LIEBRADER: Thank you, Your Honor. So the basis for
15 imposing liability, again this kind of all boiled down to it's a breach of
16 contract, it's a guarantee. We're looking to hold Mr. Robinson
17 responsible for that. Violation of Nevada Securities Act, we're looking to
18 hold Mr. Robinson and Mr. Rodriguez liable for that.

19 And the damages, there's kind of two levels. I filed two
20 statements of damages, one that applies purely to the promissory note
21 and one that provides for damages under NRS 90.660. So, I'm happy to
22 argue both of those in closing. But the damages here under 9 -- NRS
23 90.660 and they're all broken down by the plaintiff, the amount that they
24 invested, the day that they invested, the legal interest that they're
25 entitled to based on the statutory rate less the amount of interest that

1 they did receive, and the attorney's fees that we're going to be asking for
2 at a 30% rate for total NRS damages.

3 So thank you, Your Honor. I apologize for getting into it with
4 Mr. Gewerter a little bit. We'll try to keep that to a minimum.

5 THE COURT: I appreciate that. I want to clarify though, that
6 last chart you were showing me.

7 MR. LIEBRADER: Yes, Your Honor.

8 THE COURT: That is what you're seeking in damages,
9 correct?

10 MR. LIEBRADER: That is under the securities law claims
11 which would apply to Mr. Rodriguez, where as the promissory note
12 claims with Mr. Robinson as a guarantor would apply to him. But he
13 would also be susceptible to the securities law damages.

14 THE COURT: All right. And so you submitted a statement of
15 damages, but that's a different number than what was up on that chart.

16 MR. LIEBRADER: The --

17 THE COURT: I'm looking at a statement of damages from
18 February 3rd, of 2020.

19 MR. LIEBRADER: Yes, Your Honor, we filed -- I realized this
20 weekend that I didn't -- we've asked for damages under NRS 90.660
21 from the very beginning. But I thought I better put that on the record. So
22 I filed it on Saturday and I do have a courtesy copy.

23 THE COURT: Oh, okay. That's probably what happened,
24 because I looked at this on Friday. Let me just see here. Oh, I -- okay, I
25 see. Sure, I'll take a look at that. Okay, great. Thank you. All right. I

1 want to make sure that counsel for the defendant also got a copy of this
2 update summary.

3 MR. GEWERTER: I did.

4 THE COURT: Okay. All right. Thank you very much.

5 Counsel for defendant, would you like to make a statement
6 now or would you like to reserve?

7 MR. GEWERTER: No, I want to make it now, Your Honor.

8 THE COURT: Okay.

9 **DEFENDANT'S OPENING STATMENT**

10 MR. GEWERTER: First let me correct what happened, since
11 we seemed to bootstrap in what happened in Department 16 with Judge
12 Williams. What happened in Department 16, they got a judgement only
13 against Mr. Robinson on the guarantee which is now on appeal to the
14 State Supreme Court. I think it was filed last week.

15 THE COURT: I saw that.

16 MR. GEWERTER: Okay. That's it. They didn't get punitive
17 damages, they didn't get fraud, they didn't get anything else. So to talk
18 about all this securities fraud is just totally pie in the sky. But let me tell
19 you why this case really needs to be dismissed, you know, from the
20 outset.

21 If I can direct your attention to Exhibit 1, and Exhibit 1 tells the
22 whole story of this case why we have improper parties.

23 THE COURT: Oh, I don't have Exhibit 1.

24 MR. GEWERTER: I'm sorry. Your Honor, I can reach the one
25 over there by the witness.

1 THE COURT: Oh, that would be great. Sorry. Thank you,
2 Marshal.

3 MR. GEWERTER: If you can -- thanks.

4 THE COURT: I know it's use -- we're used to putting things
5 on the bench right?

6 Thank you. All right, Exhibit 1.

7 MR. GEWERTER: If I can direct Your Honor's attention to
8 Exhibit 1.

9 THE COURT: Yeah, thank you.

10 MR. GEWERTER: I apologize. I was yelling at my kid --

11 THE COURT: No, no problem.

12 MR. GEWERTER: Now, I lost my voice, Judge, yelling at my
13 kid.

14 THE COURT: Well take it easy.

15 MR. GEWERTER: She's young. I'm an older dad., anyway.
16 If I can direct your attention to the borrow is correct, Virtual
17 Communications Corporation, which is the second paragraph of the
18 promissory note.

19 THE COURT: No.

20 MR. GEWERTER: First page of the promissory note. But
21 let's look at who the holder is. The holder is the one who makes the
22 investment. We don't see Mr. Hotchkiss' name here. In fact, we don't
23 see any of the plaintiff's names here. You know why? Because this
24 case must be dismissed as a matter of law, because they failed to name
25 the indispensable party.

1 THE COURT: Well it says Mr. Hotchkiss right after Provident
2 Trust Group.

3 MR. GEWERTER: That's correct. That's the trust though.
4 He's the beneficiary of an IRA account, an IRA account --

5 THE COURT: Okay.

6 MR. GEWERTER: -- he goes through the whole thing in the
7 trial brief is a trust. It's a trust account. And only under Chapter -- NRS
8 163, only the trustee can maintain a cause of action for a trust. Mr.
9 Hotchkiss and the other plaintiffs are beneficiaries. A beneficiary does
10 not have the right or the permission to file a lawsuit on behalf of anything
11 invested on behalf of that trust. And the law is spelled in Chapter 163.

12 So we have Provident Trust for the benefit of Steven
13 Hotchkiss. And what that says is, in one simple sentence, trustee is
14 Provident Trust and the beneficiary is Steven Hotchkiss. They failed to
15 name and indispensable party. And under Rule 19 -- NRS -- I'm sorry,
16 NRCP Rule 19 as a matter of law it must be dismissed.

17 And we go through great length in our trial brief on the issues
18 on appeal also. Under Rule 17, let's go back to that first. NRCP Rule
19 17 says every action must be prosecuted in the name of the real party at
20 interest. That's Rule 17(a). Trust funds are -- trustee of trust funds are
21 the real property of interest under 17(a). It mentions trustees. It doesn't
22 say beneficiaries.

23 Mr. Liebrader and the plaintiffs were so anxious to do
24 whatever they failed to file this case properly. As a matter of law it must
25 be dismissed, not that it may be dismissed. It must be dismissed. Who

1 is the trust -- who has the power to bring this action? The only person
2 under NRS 163.020 that has the right to bring an action is the trustee.
3 So and the law is clear. The Nevada Supreme Court has addressed this
4 several times that the failure to join an indispensable party is fatal to a
5 judgment. It says it right here. It's a *Schwob v. Hemsath* case that's
6 cited on page 13 of our trial brief.

7 Who is the indispensable party here? It's Provident Trust.
8 They're the only party that can bring an action in this case. The only
9 plaintiff that has the authority to bring an action in this case, because
10 they are the only trustee. Because Mr. Hotchkiss, like the other plaintiffs
11 in this case, did not make an investment. An IRA account, which is a
12 trust account, made the investment. So as a matter of law this case
13 must be dismissed against all parties -- all defendants.

14 But that doesn't stop there. What they found in the *Waldo*
15 case there was a finding, for lack of better term. There was the
16 guarantee of Mr. Robinson. What got glossed over very quickly here in
17 opening by the plaintiffs is the fact of the bankruptcy. The bankruptcy
18 totally usurped anything that has to do with Virtual Communication
19 Corporation, or VCC as we refer to it. VCC totally wiped out the debt
20 from VCC to the plaintiffs.

21 Forget the fact there was no debt anyhow, because there was
22 no proper party here. So what happens is they turned their notes --I
23 don't care if you call them securities or not. For argument sake, their
24 notes became equity and their debt is gone and they got made whole,
25 80% in fact it's in the plan. This wasn't [indiscernible] down in

1 Bankruptcy Court. This was 80% approval by these investors.

2 But in any event, the order of the Bankruptcy Court says you
3 shall no longer have equity. You now -- you no longer have debt, you
4 now have equity. Well what happens in Nevada is that we now come to
5 a very interesting area of law. And that has to do with -- one second,
6 Your Honor, -- and this starts on page 10 of our trial brief.

7 THE COURT: Okay.

8 MR. GEWERTER: If the obligation of the party of a debt is
9 extinguished and it makes no difference how it's extinguished, then the
10 guarantee also gets extinguished. And this is because there's a
11 superseding legal obligation. The superseding legal obligation is what
12 happened in Bankruptcy Court. And there's law in Nevada -- there's
13 also Andrew law, which I know -- cite the Andrew law in the guarantees.

14 But we have a case in Nevada, *Marion Properties versus*
15 *Goff*, 840 P.2d 1230, 1992, which is cited on page 11 of our trial brief. In
16 this case there was an agreement entered into with Marion Properties.
17 And what happens is that agreement was then changed. The guarantor
18 of that agreement was then relieved of its -- or his obligation to perform
19 on the guarantee, because the original obligation went away.

20 And basically the Supreme Court said: It is well settled that
21 guarantors and sureties are exonerated if the creditor alters the
22 obligations that the principal without the consent of the guarantor or
23 surety. In this case the debt has been completely extinguished between
24 Marion and Americana. Same as the case we have here. The debt has
25 been extinguished between Mr. Hotchkiss, they're the plaintiffs whoever

1 the plaintiffs are and VCC. The discharge of the Americana's obligation
2 without consent of -- I'm paraphrasing. Without consent of the
3 guarantors discharges the obligations of the guarantors. That's what we
4 have here. Mr. Robinson never agreed to anything. He wasn't a party
5 to the bankruptcy. None of that happened here.

6 So what happens here, even if the Court wants to overlook the
7 improper party, which I submit it can't overlook the improper party to
8 Rule 17 and 19, the guarantee is extinguished. It's gone, because the
9 guarantee cannot make it as a matter of law because the original
10 obligation is gone. And that's the issue that's now pending before the
11 Supreme Court in this very case. The opening brief was filed I think a
12 week ago Monday. I forget the exact time.

13 Let's talk about fraud in general. It's well settled law for any
14 fraud case that you must have direct reliance on the person making the
15 misrepresentation. You cannot have indirect. I have to say to
16 somebody, Mr. Smith, I am going to -- I'm lying to you right now. Today
17 is Thursday when in fact today is Monday. Without that direct
18 communication that's one of the elements of fraud in Nevada and all the
19 federal courts you cannot have reliance, because there is no reliance.

20 Mr. Hotchkiss cannot get up here and testify that he had any
21 reliance or any communication whatsoever directly with Mr. Robinson,
22 Ms. Davis, or Mr. Rodriguez. So anything that's pled that even smells of
23 fraud as a matter of law must go away because fraud requires direct
24 reliance. And we cite that law also in the brief.

25 And until they can prove that, which they can't, they have

1 three hurdles to overcome and all --- any one of those wipes their case
2 out. They have the Rule 19, indispensable party which wipes out all the
3 plaintiffs. It was mis-pled. This case is defunct. We're going forward
4 because we are. We then have the guarantee, which goes away
5 because the original obligation went away. And then we fraud, which
6 goes away too because there is no direct reliance nor is it even pled that
7 way, Your Honor.

8 With that I don't want to take up the time. Let's get to -- we
9 agree to most of the exhibits coming in and due dates. And we don't
10 dispute the fact that these notes went into default. That's not an issue,
11 Your Honor. So with that being said, we just argue about the law, what
12 happens when it goes into default. Like I said, we don't even get there
13 because we have a indispensable party dispute here. With that thank
14 you, Your Honor.

15 THE COURT: All right. Now in terms of the indispensable
16 party I have a question for you. Why wasn't that raised previously?

17 MR. GEWERTER: Actually the law says that you can even
18 raise for the first time on appeal. And it wasn't because I didn't catch it
19 the first time. To be honest with you, I caught it down the road. I have
20 another case with that -- the Nevada law says even on appeal it's like a
21 jurisdictional issue. You can raise jurisdiction any time in Nevada. Even
22 in the federal courts for the first time even on appeal you can raise an
23 indispensable party as a jurisdiction. An improper party is a jurisdictional
24 issue, so it can be raised at any time. You can raise it before trial, after
25 trial, even on appeal. So it's not -- it's never untimely, Your Honor.

1 Could it have been raised earlier? It could have been. It
2 doesn't have to be. For that I apologize. But it's being raised. And it's a
3 matter of jurisdiction, which I could raise it before or after this trial. It's
4 still timely under any interpretation of Nevada law.

5 THE COURT: Okay.

6 MR. GEWERTER: Any other questions, Your Honor?

7 THE COURT: Not at this time. Thank you very much. All
8 right. So plaintiff you want to call your first witness.

9 MR. LIEBRADER: Oh sure. Thank you. Mr. Hotchkiss

10 Your Honor, I'm sorry. I just want to make sure you got a copy
11 of our opposition to those issues that they raised. We filed a brief.

12 THE COURT: I did.

13 MR. LIEBRADER: Okay. I didn't know if you wanted me to
14 respond to some of his arguments or this --

15 THE COURT: I'm confident I'll have more questions towards
16 the end of the trial and then --

17 MR. LIEBRADER: Okay.

18 THE COURT: -- if we -- if I need to hear argument on those
19 issues, I will --

20 MR. LIEBRADER: Okay.

21 THE COURT: -- invite them.

22 THE CLERK: Is that the only copy?

23 THE COURT: Do we only have one copy of all the exhibit?

24 MR. LIEBRADER: There's one copy for the -- oh, I'm sorry. I
25 have a copy right here for Your Honor or it could be for the witness.

1 THE COURT: Why don't we do that.
2 THE CLERK: I need -- the clerk needs a copy, Your Honor.
3 THE COURT: Yeah, she needs a copy too.
4 MR. LIEBRADER: Um.
5 THE CLERK: Unless you want to keep track.
6 THE COURT: Well do you have an exhibit --
7 THE CLERK: I'll just write it down -- he can --
8 THE COURT: Okay. Do you have an exhibit list that she
9 could perhaps track off of?
10 MR. LIEBRADER: Oh, yes, I do have an exhibit list.
11 THE COURT: That would be great. At a minimum, right, that
12 will work?
13 THE CLERK: Yeah.
14 MR. LIEBRADER: Yes I do --
15 THE COURT: Okay. One second, sir. Thank you.
16 THE CLERK: Are there just one set. I mean, is that like
17 plaintiffs or is it joint?
18 THE COURT: This is --
19 MR. LIEBRADER: They're all joint.
20 THE COURT: These are joint, yeah.
21 THE CLERK: All right. That's great, thanks.
22 THE COURT: Yeah. Oh great. Thank you so much. All
23 right. Let's go ahead and swear in Mr. Hotchkiss.

24 **STEVEN HOTCHKISS**

25 [having first been called as a witness and being duly sworn, testified as

1 follows:]

2 THE CLERK: Please be seated and then state and spell your

3 name of the record.

4 THE WITNESS: Spell my name?

5 THE CLERK: Yes, please.

6 THE WITNESS: Okay. Steven Hotchkiss. S-T-E-V-E-N, H-O-

7 T-C-H-K-I-S-S.

8 MR. LIEBRADER: Your Honor, can I use the well?

9 THE COURT: Absolutely.

10 MR. LIEBRADER: Thank you.

11 THE COURT: And Mr. Hotchkiss, as a reminder, everything in

12 here is being recorded. So, sometimes as humans we give a natural

13 head nod to respond as a yes or a no. I'm just going to ask you to give a

14 verbal response so we have a full record.

15 THE WITNESS: Okay.

16 THE COURT: And if you forget for some reason between

17 myself and counsel we'll try and remind you, all right?

18 THE WITNESS: All right.

19 THE COURT: Thank you very much.

20 **DIRECT EXAMINATION**

21 BY MR. LIEBRADER:

22 Q Good morning, Mr. Hotchkiss.

23 A Good morning.

24 Q You traveled a long way to get here. Where did you come

25 from?

1 A A little town called Clarks, Nebraska. It's the middle of the
2 state.

3 Q And how long did it take for you to get here?

4 A Well about two - two and half hour drive from Omaha to

5 MR. GEWERTER: Your Honor, I'm going to object to this -- I
6 know where he's going with, the sympathy argument. This is a factual
7 dispute about a promissory note. I thought Your Honor was going to
8 limit --

9 THE COURT: I understand, I said that I would allow some
10 background information.

11 MR. GEWERTER: Okay.

12 THE COURT: And I'm going to allow that, so it's overruled at
13 this time.

14 MR. GEWERTER: Okay.

15 BY MR. LIEBRADER:

16 Q Mr. Hotchkiss.

17 A Yeah, like I said, it took about two and half hours to get to
18 Omaha and my wife drove me. And we flew here -- I flew here.

19 Q What do you do for a living?

20 A Right now I'm retired.

21 Q How long have you been retired?

22 A Since 2000 -- well I was forcible retired in 2013. I lost my job
23 due to loss of contract and I was out of work for a year and found
24 another one in 2014. And got -- had some health problems and had to
25 retire again in 2015.

1 Q And what did you do before -- during your prime working, what
2 was your prime work?

3 A I was a software engineer.

4 Q Who did you work for?

5 A Well my first nine years as an engineer I was in the Air Force
6 and worked at a Phased-Array Radar site bringing it online. I worked
7 with people from CDC and Raytheon and IBM.

8 Q And how many years were -- did you work as a software
9 engineer?

10 A Nine while I was still in Air Force. And twenty-six I was a --
11 worked for a defense contractor.

12 MR. GEWERTER: Just one quick, David, my client's elderly
13 and he's having trouble hearing.

14 THE COURT: Oh.

15 MR. GEWERTER: Could we have your client speak up a little
16 bit maybe.

17 MR. LIEBRADER: Oh, sure.

18 THE COURT: All right. Actually if you can --

19 MR. GEWERTER: Oh, you want the headphones, Ron?

20 THE COURT: Yeah.

21 MR. ROBINSON: No, that's fine.

22 THE COURT: Are you sure? If you pull that microphone just
23 a little closer to you and speak right in and you can bend -- see how this
24 bends.

25 THE WITNESS: Okay. How's that --

1 MR. GEWERTER: Thank you.

2 THE COURT: That might help a little bit too. Is that a little
3 better?

4 MR. GEWERTER: Yes.

5 BY MR. LIEBRADER:

6 A Okay. I was a software engineer in the Air Force for nine
7 years. Got out of the Air Force and then I worked for several
8 companies. McDonnell Douglas and the last one I had was Booz Allen
9 Hamilton.

10 Q Okay. In addition to nine years in the Air Force, do you have
11 any other military experience?

12 A Yes, I was in the Navy for four years before that.

13 Q Okay. Let's talk about VCC, Virtual Communications. How
14 did you find out about that initially?

15 A Well I had talked to Josh Stoll.

16 Q And who's Josh Stoll?

17 A He worked for Retire Happy.

18 Q Okay.

19 A And he told me about VCC.

20 Q What is -- just for the Judge's sake, what is Retire Happy?

21 A It was a financial advisor company.

22 Q Okay. And do you know how Mr. Stoll initially contacted --
23 where he got your name from?

24 A No, I'm really not sure how that began. I don't know if I sought
25 him out or he sought me out. I don't remember.

1 Q Okay. And so what did -- what was -- what were the initial
2 conversations with Mr. Stoll about?

3 A Well, he said that he had a real good investment come up and
4 he said that I could invest in this software company, building something
5 called ALICE. And that it was guaranteed by a very well respected
6 multi-millionaire. He said he's going to pay 9% so he can tie your money
7 up for only 18 months and I had a guarantee of getting my principal
8 back.

9 Q Okay. You said a guarantee of getting your principle back?

10 A Well I don't know -- remember exact words, but yeah that was
11 the essence of it.

12 Q Okay. And when was this? Actually see that white book in
13 front of you?

14 A Yeah.

15 Q Can you turn to tab 1 and the first page? And you'll notice the
16 upper right-hand corner it says Hotchkiss v. Robinson and there's a
17 number next to it all the way in the top upper right.

18 A Oh, yeah on top.

19 Q So most the pages are going to be marked like that.

20 A Okay.

21 Q So I might refer to this as page 1.

22 A Okay.

23 Q Exhibit 1, page 1. So are you familiar with this document?

24 A Yes, I am.

25 Q And what is it?

1 A It's a promissory note.

2 Q And who's the promissory note with?

3 A Between me and -- it says borrower me and Provident Trust

4 Group.

5 Q Who's the maker, the borrower, the maker?

6 A Oh VCC, Virtual Communications Corporation.

7 Q Okay. And what's your relationship -- what can you tell us

8 about Provident Trust? What were they?

9 A Well that was another thing I don't remember how it got

10 started, but they talked me into taking my money out of Fidelity and

11 putting it into a self-directed 401K.

12 Q Where was it invested in at Fidelity?

13 A I'm sorry?

14 Q What was your money invested in at Fidelity?

15 A How much?

16 Q No, what was it, stocks, Microsoft, --

17 A Yeah, it's --

18 Q -- gold?

19 A -- a variety of things.

20 Q Mutual funds.

21 A I had what medium risk.

22 Q Okay. All right. So and Provident Trust, I'm sorry to interrupt

23 you, what -- how did they come into the picture?

24 A Like I said, I think I was trying to start up a business, online

25 business. And I believe it was them that suggested I go to Provident

1 Trust.

2 Q Them meaning Retire Happy --

3 A Uh-huh.

4 Q -- or Virtual Communications?

5 A The online business people I think were --

6 Q Okay, got it.

7 A -- pointing me to Provident Trust.

8 Q Okay. So would it be fair to say on September 23rd of 2013
9 you invested \$75,000 with Virtual Communications Corporation --

10 A Yes.

11 Q -- evidenced by this promissory note in Exhibit 1?

12 A Yes.

13 Q And can you turn to page 3?

14 A Okay.

15 Q Is your signature on this document?

16 A It is.

17 Q And is Mr. Robinson's signature on this document?

18 A Yes, it is.

19 Q And as the borrower -- above your signature, right? Is that
20 correct?

21 A Yeah.

22 Q On behalf of Virtual Communications.

23 A Yes.

24 Q And then on the bottom, personal guarantee as to Mr.
25 Robinson.

1 A Yes.

2 Q And was the personal guarantee an important and material
3 reason that you invested?

4 A Yeah, it was the primary reason. It said it was loan that was
5 guaranteed by the multi-millionaire. He was supposed to be well
6 respected and 9% interest rate guaranteed. I thought it was a pretty
7 safe investment.

8 Q Okay. The \$75,000 that you invested, how much money when
9 you were working, how much money did you put away a year?

10 MR. GEWERTER: Objection, Your Honor, no relevance.

11 THE COURT: Counsel, how --

12 MR. LIEBRADER: Was this a lot of money to you, Mr.
13 Hotchkiss?

14 THE COURT: All right, hold on, hold on, hold on. How is the
15 amount of investment relevant?

16 MR. LIEBRADER: I think it's relevant certainly to the
17 importance of this money to Mr. Hotchkiss and the effect of losing has
18 had on his life.

19 THE COURT: All right. So I'm going to sustain the objection
20 to how much was invested. You can talk about his overall investment
21 picture at the time he made this investment however.

22 MR. LIEBRADER: Okay. Thank you.

23 BY MR. LIEBRADER:

24 Q So this -- these were retirement funds, is that right?

25 A Yes, it was.

1 Q What percentage of your retirement assets did \$75,000
2 represent?

3 A A little lower than a third, a little less.

4 Q Between a quarter and a third --

5 A Yeah, closer to the third --

6 Q -- of your retirement assets?

7 A -- than the quarter.

8 Q Okay. Where was the other money invested?

9 A I had bought a home in Jacksonville, a rental.

10 MR. GEWERTER: Your Honor, we're going to go -- now
11 we're going to go into net worth analysis. I understand for the sympathy
12 --

13 THE COURT: They're not asking for a net worth analysis, so
14 it's overruled at this time. I did say he could ask this question.

15 MR. GEWERTER: Okay.

16 BY MR. LIEBRADER:

17 Q Okay. So between a third and a quarter of your net worth,
18 your retirement assets were invested in VCC promissory notes, right?

19 A Yes.

20 Q Okay. Did you believe this was a risky investment?

21 A No, I thought it was pretty safe.

22 Q And where did you get that idea from?

23 A From the conversation I had with Josh. In fact --

24 Q So would it be fair to say you had an expectation of making
25 9% on the investment?

1 A It was a very real expectation from me on that.

2 Q Did you have to do anything under the investment? Were you
3 being asked to like contribute code to this software or come down now?

4 A No.

5 Q What were the mechanics of investing? How did -- how was
6 that handled? You had the money in Fidelity. How did it ultimately get
7 to the point where you received the promissory note back?

8 A Well I transferred the money from Fidelity into Provident
9 through a wire transfer. They were both 401Ks. The only difference
10 was Provident was self-directed and --

11 Q Meaning you told them how to make the investments?

12 A Right.

13 Q Okay. And then after Provident got the money, do you know
14 how it got to VCC, did you have anything to do with that?

15 A As far as I know it was just in a transfer from my account to
16 theirs.

17 Q Okay. And after you invested in September of 2013, did you
18 receive some interest?

19 A I did for three or four months. It wasn't very much, but it came
20 regularly.

21 Q And then what happened?

22 A Then it stopped.

23 Q Okay. And did you complain to anyone about that?

24 A Yes, I called them and talked to a different officers of the
25 corporation and I also sent emails.

1 Q Okay. Can you turn in tab 3 to page 53 on the top?

2 A I'm sorry. I've got tremors and I -- okay.

3 THE COURT: That's fine.

4 BY MR. LIEBRADER:

5 A 53, there we are.

6 Q Page 53. In the middle of the page right around where that
7 metal ring is, there's some email communication between yourself and
8 Mr. Robinson, is that right?

9 A Yes.

10 Q And can you read the one in the middle. It looks like it's dates
11 Wednesday, June 7th, 2017. You were writing to Mr. Robinson. Can
12 you read that for us please?

13 A I have been very patient with my payback but hope you are
14 not taking advantage of the patience. I had to go through a difficult time
15 where I had to hire a lawyer for bankruptcy, but ended up settling with
16 creditors. I told you guys about that but still got no payment. Now my
17 wife has had some bad new on a medical exam and she's going to have
18 to have more testing that hopefully will rule out cancer. The problem she
19 has no insurance so please, please, please pay the money you owe me.
20 Don't fail me this time, because now we're talking about someone's life
21 or welfare. When can you pay the -- off the Provident loan?

22 Q And the next email is July 10th, and your sending that to Mr.
23 Robinson?

24 A Yes.

25 Q What did you write?

1 A I am still waiting for your response. I'm of the belief you are
2 an honorable man. I would hope you could reply with a status to my
3 loan payback. I await your reply.

4 Q And then it looks like -- turn please to the next page on July
5 26th of 2017. You received an email from Mr. Rodriguez, is that right?

6 A Yes, Vernon Rodriguez.

7 Q And what did he write to you?

8 A He said please go to VirtualCommunicationCorp.com to
9 receive the latest correspondence regarding the company's effort to
10 raise capital and in order to address your investment payback. We're
11 still in the process with this capital raise through the New York
12 Investment Banking Firm. We are hopefully -- we are hopeful that within
13 the next 30 days that we will be successful. In the meantime, we will
14 post any news on the website. Sorry you could not reach Mr. Robinson.
15 We're still committed to taking care of our noteholders as soon as we
16 can.

17 Q And did you ever receive a payback of your funds?

18 A No, but I remember that -- I think they had something going on
19 with Minolta at that time.

20 Q But did you receive your money back?

21 A No.

22 Q At any time?

23 A No.

24 Q Have you received your money back today?

25 A No.

1 Q And the last time you received interest was in January of
2 2015?

3 A Yes.

4 Q And you had to hire a lawyer to work on this case, is that
5 right?

6 A Yes, I hired you.

7 Q And without waiving any portion of the attorney-client
8 privileges, you -- that you've agreed to pay 30% of whatever's
9 recovered?

10 A That's true, yes.

11 Q How has the loss of this money affected your life?

12 MR. GEWERTER: I'm going to object to this, Your Honor.
13 Not relevant.

14 THE COURT: I'm going to sustain that objection, even though
15 I can imagine --

16 MR. LIEBRADER: All right, Your Honor.

17 THE COURT: -- based on what's been testified to.

18 MR. LIEBRADER: Thank you, Your Honor.

19 Mr. Hotchkiss, I have nothing else. Mr. Gewerter may have
20 some questions for you.

21 THE WITNESS: Okay.

22 THE COURT: Cross-examination when you're ready.

23 MR. GEWERTER: Yes, Your Honor.

24 **CROSS-EXAMINATION**

25 BY MR. GEWERTER:

1 Q Mr. Hotchkiss, how are you today?

2 A I'm fine. Thank you.

3 Q My name is Harold Gewerter. I represent the three individual

4 defendants sitting over here today. Have you ever met them before

5 today?

6 A No, this is the first time.

7 Q So you never talked to them on the phone --

8 A I talked to Mr. Robinson on the phone I believe.

9 Q When was that? Before you invested?

10 A No, after.

11 Q Okay. Prior to telling you invested -- you had your trustee

12 invest your money, did you speak with Mr. Robinson?

13 A Before?

14 Q Yes.

15 A No.

16 Q How about Alisa Davis --

17 A No.

18 Q -- the lady that's -- that's a no?

19 A No.

20 Q And how about Mr. Rodriguez?

21 A Not before I -- I did talk --

22 Q Before I'm talking about.

23 A Okay.

24 Q So before you invested, did you speak with Mr. Rodriguez?

25 A No.

1 Q At the time you invested your money, did you rely upon any
2 statements, verbal statements made by any of these three individuals?
3 A Not verbal, no.
4 Q Did you rely upon anything in writing before you made the
5 investment by Mr. Rodriguez?
6 A Just the loan agreement.
7 Q Well Mr. Rodriguez did not sign the loan agreement did he?
8 A Well that's what I was provided for the loan.
9 Q So the only thing you relied upon when you made your
10 investment then is just the loan agreement?
11 A The loan agreement and what Josh Stoll --
12 Q What Josh told you, correct?
13 A Correct.
14 Q But nothing the Mr. Robinson told you, correct?
15 A No, never talked to him before.
16 Q And nothing the Ms. Davis told you, correct?
17 A Correct.
18 Q And nothing that Mr. Rodriguez said, correct?
19 A That's correct.
20 Q Could you go to Exhibit 1 please?
21 A Exhibit 1.
22 Q It's the very first page of Exhibit 1. It's tab 1, first page.
23 A Okay.
24 Q Do you see that? What's that document entitled?
25 A Promissory note.

1 Q Have you ever seen this document before today's date?
2 A Yes.
3 Q When did you first see it?
4 A Well it had to be sometime September of 2013.
5 Q I want you to look at the first three pages of that document.
6 A First three?
7 Q Yeah, it's the upper right-hand corner it should be Hotchkiss
8 versus Robinson, 1, 2, and 3.
9 A Okay.
10 Q Do you see that?
11 A Yes.
12 Q I don't see your signature on any one of those pages? Is it
13 there?
14 A Who's -- mine?
15 Q Your signature, yes.
16 A I see my initials.
17 Q Okay. I'm asking about your signature.
18 A No.
19 MR. LIEBRADER: I'm sorry. That misstates -- he's already
20 testified that's his signature on page 3.
21 THE WITNESS: Yes, that's my signature on page 3.
22 BY MR. GEWERTER:
23 Q Where on page 3 is your signature?
24 A Approved by --
25 Q Doesn't that say Provident Trust Company? You signed for

1 Provident Trust?

2 A It says -- it says print name, Provident Trust Company, FBO,
3 Steven A. Hotchkiss, Solo-K 130800142.

4 Q Do you have any knowledge how a trust operates, sir?

5 A No.

6 Q Like a family trust or any of those things?

7 A No.

8 Q Okay. Now on the first page says the holder says Provident
9 Trust Group LLC, FBO, then your name. Is that correct? The very first
10 page the third paragraph down.

11 A First page -- what am I looking for?

12 q Look at the third -- it says holder and the holder's address. Do
13 you see that?

14 A Oh yeah, Provident Trust.

15 Q Take your time, sir.

16 A Provident Trust Group LLC, FBO Steven A. Hotchkiss, Solo-K
17 130800142.

18 Q In fact, sir, you could not -- you did not invest your money
19 directly with VCC, Virtual Communications did you. You went through a
20 trust company and the trust company invested the money. Is that
21 correct?

22 A Yes, that's correct. But he signed --

23 Q There's no question, Your Honor. Sir, no question. Now let's
24 go to the third page. See how it says personal guarantee?

25 A Yes.

1 Q I know you can't read the signature, but is there a printed
2 name beneath that?

3 A RJ Robinson.

4 Q Okay. And what I'm curious about the first page for the holder
5 says Provident Trust, but then you sign on the third page for Provident
6 Trust. You're not the trustee of Provident Trust though are you?

7 A No, that's where they put a big X there said sign here.

8 Q Okay, so --

9 A So that's what I did.

10 Q So somebody told you to sign there right?

11 A Yes.

12 Q Was it Mr. Robinson that told you to sign there?

13 A No, it was Provident Trust -- I mean, Retire Happy.

14 Q But nobody from VCC or these three individuals told you to
15 sign on page 3, did they?

16 A No.

17 Q That was this company called Retire Happy, correct?

18 A Correct.

19 Q Okay. Now, you're a software engineer?

20 A I was for 35 years.

21 Q Okay. For how long?

22 A 35.

23 Q Oh, that's almost as long as I've been doing this, close. And
24 you went to school to learn that?

25 A Yes.

1 Q You're a very -- you consider yourself a relatively smart
2 individual?

3 A Yes.

4 Q Did you ever ask any questions from anyone in relation to this
5 entire investment prior to the time that you made the -- or you directed
6 the Provident to make the investment that were not answered to your
7 satisfaction?

8 A I had questions and I addressed them to Josh Stoll and he
9 answered them for me.

10 Q Did you ever get -- ever told anyone you could not ask that
11 question.

12 A No, what do you mean that I could not --

13 Q Did Josh tell you -- did you ask Josh a question and Josh said
14 no you cannot ask that question?

15 A No.

16 Q Did Mr. Robinson tell you before you invested you could not
17 ask that question?

18 A I don't know what kind of question you're talk --

19 Q Any question.

20 A No, no one ever said that.

21 Q Okay. No one did, correct?

22 A No.

23 Q So your only reliance here is you have a promissory note and
24 something that appears to be a guarantee, correct?

25 A Correct.

1 Q And you had conversations with Mr. Stoll whoever that is,
2 correct?

3 A Correct.

4 Q And you must have had some communication with Provident
5 Trust?

6 A Yeah.

7 Q And they're a licensed trust company, an independent
8 licensed trust company?

9 A As far as I know. There -- I don't understand that question
10 either.

11 Q Okay. Well you did not direct Provident Trust to sue on your
12 behalf did you?

13 A No.

14 Q Okay.

15 A I signed this promissory note --

16 Q No, I understand.

17 A -- with them.

18 Q Now there's a bankruptcy that took place with VCC at some
19 time, correct?

20 A Yes.

21 Q And do you know the nature of the bankruptcy? You were
22 sent some documents in the mail by whoever the bankruptcy lawyers
23 were for VCC -- it wasn't me.

24 A Yeah, I probably did, but I don't remember what it said.

25 Q Did you vote for this -- no, there's a plan of reorganization they

1 call it in Bankruptcy Court.

2 A Yeah.

3 Q Did you vote for the plan or vote against it what did you do?

4 A That was one of those cards I had to send back. I don't
5 remember which I did.

6 Q But you're aware that over 80% of the noteholders voted yes
7 for the plan?

8 A I am now.

9 Q And you're aware that the Court approved that plan?

10 A Yes.

11 Q And you're aware that because the Court -- Federal Judge
12 approved that plan that your note -- debt was converted to stock of an
13 equivalent value, correct?

14 A Well --

15 Q Have you read the plan, sir?

16 A Yeah, I --

17 Q And the plan has language in there that says it must be fair --
18 it must be of equivalent value --

19 A Yeah, --

20 Q -- when something happen --

21 A I saw that they put 75,000 -- I just this last month, I noticed the
22 put 75,000 shares in there. I think it was a dollar -- no it was five dollars
23 a share so it would have been 15,000 in my --

24 Q So what's the value of that then?

25 A Right now?

1 Q No, no, no, based on the -- you had 15,000 shares you said?
2 A Yeah, and at the time they gave them to me they were
3 supposedly five dollars a piece.
4 Q Okay, and did you object to that valuation?
5 A I didn't even know I got it in there.
6 Q Well it came to you in the mail, the plan of organization,
7 correct?
8 A Yeah, but I --
9 Q And that's the plan that the --
10 THE COURT: Hold on. Sorry.
11 MR. GEWERTER: That's fine.
12 THE COURT: Sorry, I've had to interrupt both of you. But
13 make sure each of you are finishing your question then finishing your
14 answer.
15 THE WITNESS: Okay.
16 THE COURT: So we get a full record. All right.
17 THE WITNESS: Okay.
18 THE COURT: So I'm sorry, what was the question counsel?
19 BY MR. GEWERTER:
20 Q Did you -- you got the plan that spelled out the exchange for
21 debt to equity, correct?
22 A Yes.
23 Q And that was approved by the Federal Bankruptcy Court,
24 correct?
25 A Yes, but --

1 Q And you got your shares of stock, correct?

2 A Well, yeah, I saw about a month ago --

3 Q Is that a yes or --

4 A -- that they were in there.

5 Q Is that a yes or no, sir, did you get your share of stocks -- your

6 share of stock as set forth in the bankruptcy plan?

7 A Yes.

8 Q Did the bankruptcy plan treat you differently than other

9 investors in this case?

10 A I have no idea. I guess not.

11 Q Okay. And so did you read in the plan where it talks about

12 equivalent value, that your equity -- I'm sorry, your debt became of

13 equivalent value to your equity now that's a stock? If you -- that's fine. If

14 you haven't, you haven't. Okay.

15 A No.

16 Q So you got something for your promissory note, you got stock

17 in essence, correct?

18 A Yes.

19 Q So you've already collected your money, is that correct?

20 A No, it's --

21 Q You got stock didn't you?

22 A I got stock, but I didn't get any money.

23 Q Well does the stock -- the court told you the stock has value,

24 correct?

25 A They're the only ones that said it's got value.

1 Q So you think the Federal Judge misled you?

2 MR. LIEBRADER: Objection.

3 MR. GEWERTER: No, I want to know if the Federal Judge
4 signed off and said this is of equivalent value.

5 THE COURT: That's sustained. It's argumentative.

6 MR. GEWERTER: He's an adverse witness, Your Honor, but
7 I'll withdraw it.

8 BY MR. GEWERTER:

9 Q So were -- before you had debt now you have equity. You
10 went from a promissory note to stock, is that correct?

11 A I have stock. I don't know what it's worth.

12 Q Okay. But you got exactly what the plan told you you were
13 going to get though, right?

14 A Yes.

15 MR. GEWERTER: All right. No further questions. Thank you.

16 THE COURT: Redirect examination.

17 MR. LIEBRADER: Just a couple.

18 **REDIRECT EXAMINATION**

19 BY MR. LIEBRADER:

20 Q Mr. Hotchkiss, how -- can you sell the stock in your Provident
21 Trust account?

22 A Not as far as I know I can't.

23 Q Is -- there's actually a restriction on it, right?

24 A Right.

25 Q And does it -- so can you go out and sell it to Mr. Gewerter for

1 a dollar share.

2 A I couldn't sell it to anybody.

3 MR. LIEBRADER: Okay. Thank you. Your Honor, at this
4 point I'd like to move Exhibit 1 and 3 into evidence.

5 MR. GEWERTER: No objection, Your Honor.

6 THE COURT: Okay. Thank you. They will be --

7 MR. LIEBRADER: I have nothing else for Mr. Hotchkiss,
8 thank you.

9 THE COURT: That will be admitted.

10 **[EXHIBITS 1 and 3 -- ADMITTED]**

11 MR. GEWERTER: I have one.

12 THE COURT: You want a quick follow-up? You can do that.

13 MR. GEWERTER: Yeah, it's just really one question.

14 THE COURT: No problem.

15 **RE-CROSS EXAMINATION**

16 BY MR. GEWERTER:

17 Q Mr. Hotchkiss, when you got stock -- maybe I'm confused.

18 You got common stock plus you got preferred stock, correct?

19 A Right.

20 Q Okay. So the common stock is equity and the preferred stock,
21 at some point, converts back to debt again, correct?

22 A Well I think it was all preferred.

23 Q You sure?

24 A I'm pretty sure.

25 Q If you're not sure that's fine, just let me know.

1 A I thought so.

2 Q I thought the plan said common and preferred, but if you don't
3 know --

4 A I'm pretty sure it was all premium.

5 Q That's fine. No further questions.

6 THE COURT: Okay. All right. Thank you very much, Mr.
7 Hotchkiss, you can step down.

8 Who is your next witness?

9 MR. LIEBRADER: It would be Mr. Robinson.

10 THE COURT: Mr. Robinson. All right, so --

11 MR. GEWERTER: Before we go on we -- there's a stipulation.
12 I know he's not bringing out the other witnesses. We did agree to the -- I
13 just want to clean house a little bit.

14 THE COURT: Sure.

15 MR. GEWERTER: We've got the promissory notes admitted.
16 We're not going to argue about the authenticity or the foundation for the
17 promissory notes, I should say.

18 MR. LIEBRADER: Yeah, and that's Exhibit 1, which are just
19 the promissory notes and the demand letters.

20 MR. GEWERTER: Are those all the promissory notes for all of
21 your plaintiffs here?

22 MR. LIEBRADER: Yes, sir.

23 MR. GEWERTER: Okay.

24 THE COURT: Okay. So that's been admitted.

25 MR. GEWERTER: I'm sorry.

1 THE COURT: No, that's fine. Well here's my thought. It's
2 12:20. I think instead of starting a new witness we will go ahead and
3 break for lunch now, that way everyone can grab a bite to eat.

4 MR. LIEBRADER: Sounds good.

5 THE COURT: And we'll come back and we'll do the next
6 witness. Let's see here it's 12:20. Why doesn't everyone come back at
7 1:45.

8 MR. GEWERTER: 1:45 you said?

9 THE COURT: 1:45.

10 MR. GEWERTER: You're very generous, thank you.

11 THE COURT: All right. Well, you know, trying to lunch on a
12 Monday in this courthouse can be a challenge so --

13 MR. GEWERTER: No, it's Fridays that are the bad --

14 THE COURT: Yeah.

15 MR. GEWERTER: No Friday everyone is home.

16 MR. LIEBRADER: How late -- Your Honor, how late will we
17 go today?

18 THE COURT: We'll go to 5.

19 MR. LIEBRADER: Till 5 and then tomorrow as far as a start
20 time. Do you have a morning calendar?

21 THE COURT: I have a morning calendar. Let me see. Let
22 me tell you.

23 MR. GEWERTER: We're going to finish tomorrow. This is --
24 you the witnesses with, yeah.

25 THE COURT: I don't actually have that much on calendar

1 tomorrow, but again my -- when I say I'm going to have a short calendar
2 it gets long.

3 MR. GEWERTER: You're doing a criminal --

4 THE COURT: So think we'll start tomorrow at 10:30.

5 MR. LIEBRADER: 10:30. Okay.

6 MR. GEWERTER: Okay. And we will be done tomorrow.

7 THE COURT: Okay.

8 MR. GEWERTER: One other stipulation, Your Honor, instead
9 of me recalling witnesses, can I just take his witnesses and treat them as
10 my direct also? It saves me trying to recall witnesses.

11 THE COURT: Oh, I think that's fine.

12 MR. LIEBRADER: Yeah, no objection.

13 THE COURT: I have no objection to that.

14 MR. GEWERTER: Okay.

15 THE COURT: Okay.

16 MR. GEWERTER: Thank you, Your Honor.

17 THE COURT: All right. Great, so we'll see everyone at 1:45.
18 Have an enjoyable lunch.

19 [Recess for lunch at 12:21 p.m.]

20 [Trial resumed at 1:47 p.m.]

21 THE COURT: All right. Welcome back. Are we back on the
22 record, Gina?

23 THE RECORDER: Yes, ma'am.

24 THE COURT: All right. We're back on the record in case A-
25 17-762264-C, Hotchkiss versus Robinson, Rodriguez, et al. All right, are

1 we ready to resume with testimony?

2 MR. LIEBRADER: Yes, Your Honor.

3 THE COURT: All right, when you're ready.

4 MR. LIEBRADER: I'd like to call Mr. Robinson as my next
5 witness.

6 **RONALD J. ROBINSON**

7 [having been called as a witness and being first duly sworn, testified as
8 follows:]

9 THE CLERK: Please state and spell your name for the record
10 and be seated.

11 THE WITNESS: Ronald J. Robinson, R-O-B-I-N-S-O-N.

12 THE COURT: When you're ready.

13 MR. LIEBRADER: Thank you, Your Honor.

14 **DIRECT EXAMINATION**

15 BY MR. LIEBRADER:

16 Q Good afternoon, Mr. Robinson.

17 A Good afternoon.

18 Q We meet again.

19 A You bet.

20 Q There's a book in front of you, an exhibit binder. I'd ask you to
21 turn to tab 13 please. And the same I'll tell you -- give you that same
22 information I gave to Mr. Hotchkiss. On the top of every page there
23 should be a stamp, upper right-hand -- upper right portion of the page
24 Hotchkiss versus Robinson and then there will be a number.

25 A Yes.

1 Q Do you see that? So and you've seen this document before.
2 This a private to placement memorandum that VCC put together in 2016
3 to raise additional funds, is that right?
4 A Yes.
5 A And you provided some input in the drafting of this to whoever
6 put it together?
7 A Yes.
8 Q Can you turn in this document to page 185? Mr. Robinson,
9 page 185 on the upper right-hand portion of each page. And they're in
10 consecutive order.
11 A Is 195 in 13 or is it in 14?
12 Q 185 in Exhibit 13.
13 A It doesn't go up to that.
14 Q Are you sure about that, sir?
15 A Well as far as I can see here.
16 THE COURT: You want to look in the upper right-hand
17 corner.
18 THE WITNESS: Oh, I'm looking the wrong spot?
19 THE COURT: Yeah, you're looking down. So you look up,
20 you see those numbers on top there?
21 THE WITNESS: Oh, yeah.
22 THE COURT: There you go. So you go about --
23 THE WITNESS: I was looking at the wrong number.
24 THE COURT: That's all right, that happens.
25 BY MR. LIEBRADER:

1 Q Yeah, and I'll -- Mr. Robinson, I'll always be referring to the
2 number in the upper right-hand corner.

3 A Okay. Okay, I've got it.

4 Q So as the information on here talks about the officers and
5 directors of VCC, is that correct?

6 A Yes.

7 Q And the information provided in this document says Ron
8 Robinson is the company's chairman of the board. Was that true --

9 A Yes.

10 Q -- in 2016? He has held this position since 2012 and is in
11 charge of all policy and operations of the company. Was that a true
12 statement?

13 A Yes.

14 Q And underneath it says Simon Vern Rodriguez is a chief
15 financial officer. Do you see that?

16 A Yes.

17 Q And I guess he goes by Vern, is that right Vernon?

18 A Correct.

19 Q Okay. Vernon Rodriguez is the company's chief financial
20 officer. Do you see that?

21 A Yes.

22 Q Was that accurate at the time?

23 A It is.

24 Q He has a background in sales, marketing, and accounting
25 strategies, and systems for financial services firms. Was that accurate?

1 A Yes.

2 Q It says he has held this position since 2012 and is in charge of
3 financial policy and financial records of the company. Is that true?

4 A Correct.

5 Q And that was true back then?

6 A Yes.

7 Q Okay. Thank you. Can you turn to tab 15 please? And do
8 you remember about a couple of years ago we were -- we had a trial
9 with Ms. Waldo as a plaintiff?

10 A Yes.

11 Q And you were a defendant in that case?

12 A Yes.

13 Q And do you recall that Judge Williams heard trial over several
14 days?

15 A Yes.

16 MR. GEWERTER: I'm going to object to the relevance of the
17 document.

18 THE COURT: We're not quite there yet, so let me see what --

19 MR. GEWERTER: Okay.

20 THE COURT: Overruled for now.

21 MR. LIEBRADER: Thank you.

22 BY MR. LIEBRADER:

23 Q Mr. Robinson, did Judge Williams find you liable as a
24 guarantor of the VCC promissory notes?

25 A Yes.

1 MR. GEWERTER: I'm going to object --

2 MR. LIEBRADER: And so let me ask you this --

3 MR. GEWERTER: Same objection, Your Honor, relevancy.

4 THE COURT: That's overruled.

5 BY MR. LIEBRADER:

6 Q Is it still your position that you're not legally liable as a

7 guarantor under the VCC promissory notes, or have you changed your

8 position on that?

9 A No.

10 Q Your position is that you are not legally liable as a guarantor?

11 A Yes.

12 Q And what's your basis for that?

13 A When the company filed for Chapter 11, it eliminated my

14 obligation under the guarantee.

15 Q And what's your basis for that?

16 MR. GEWERTER: Your Honor, it calls for a legal conclusion.

17 He's not a lawyer.

18 MR. LIEBRADER: Well, --

19 THE COURT: If he knows he can testify to it.

20 MR. GEWERTER: That's fine, go ahead.

21 THE COURT: It's overruled.

22 BY MR. LIEBRADER:

23 A Supreme Court decision.

24 Q Which Supreme Court decision, sir?

25 A A Supreme Court decision.

1 Q Which one was that?

2 A I --

3 MR. GEWERTER: Your Honor, I'm going to let him read the
4 trial brief if they're going to ask legal questions.

5 THE WITNESS: I don't recall the number.

6 THE COURT: Hold on. What's your objection?

7 MR. GEWERTER: Objection is he's -- it's like a -- he's asking
8 legal stuff, which he doesn't know the answer to. But if he wants to refer
9 him to a legal document I would have no objection, Your Honor. So let
10 him look at the trial brief. That's our legal position which was by me not
11 by him.

12 THE COURT: Understood. All right, so that objection is
13 overruled. He can testify whether or not if he knows or not. He does --
14 he said he doesn't know the case. So that will be the testimony.

15 MR. GEWERTER: He might know the theory, but not the
16 case name.

17 THE COURT: That's been sustained. I mean, that's been
18 established. He -- the theory of the case has been established --

19 MR. GEWERTER: Okay, that's fine.

20 THE COURT: -- by his testimony. Yeah.

21 MR. LIEBRADER: I won't bog down on this, Your Honor.

22 BY MR. LIEBRADER:

23 Q So then I understand you, Mr. Robinson, because in the
24 *Waldo* case your position was is that you did not intend to guarantee the
25 promissory notes. Have you abandoned that defense?

1 A Obviously the Court did.

2 Q How about you?

3 A No.

4 Q You're still maintaining in this case that you did not intend to
5 guarantee those promissory notes?

6 A I'm not maintaining anything in this case, because the
7 guarantee became moot as a result of the Chapter 11 filing.

8 Q That's your position, and obviously --

9 A That's my position today.

10 Q That's -- we obviously disagree. But the question is, are you
11 still maintaining that you did not intend to guarantee the promissory note
12 that these plaintiff's purchased?

13 A It's a moot question.

14 Q Well it's a yes or no question, sir. Please answer yes or no.

15 A Yes.

16 Q Your position is you didn't -- you still maintain that you did not
17 intend to guarantee the notes?

18 A Yes.

19 Q Okay. Thank you. And will you turn you tab 1 please? And
20 I'll represent to you, Mr. Robinson, that tab 1 contains all of the
21 promissory notes signed by the plaintiffs in this case and all the demand
22 letters. Would you agree that all the promissory notes were virtually
23 identical except for the name of the plaintiff, the date of purchase, and
24 the amount invested?

25 A Yes.

1 Q So it was the same form promissory note throughout?

2 A Yes.

3 Q Okay, 9% interest, right?

4 A Say again?

5 Q All the notes -- all the promissory notes called for 9% interest?

6 A Correct.

7 Q From the beginning of the offering until the end of the offering,

8 correct?

9 A Correct.

10 Q And 18 month term?

11 A Correct.

12 Q With a balloon payment at the end?

13 A Correct.

14 Q And 5% late penalty at the end for on the interest, is that right?

15 A Correct.

16 Q In addition there was an acceleration clause in the event of a

17 default, is that right?

18 A Yes.

19 Q And an attorney's fees provision per the term of the note, is

20 that right?

21 A I'm sorry, I didn't catch that.

22 Q Was there any attorney's fees provision in all the notes. In the

23 event that the plaintiffs had to sue on the note they would be entitled to

24 their reasonable attorney's fees?

25 A I don't recall that being there, but if you say so.

1 Q Well let's take a look. Turn to page 2 of Exhibit on tab 1.

2 A I'll take your word for it.

3 Q Well I don't want to argue with you. I mean, is --

4 A I'm not arguing.

5 Q So you would agree then -- so if I read it to you, attorney's
6 fees in the event that litigation results from or arises out of this note or
7 the performance thereof, the parties agree to reimburse the prevailing
8 parties reasonable attorney's fees and costs in addition to any other
9 relief to which the prevailing party may be entitled.

10 A Yes.

11 Q Do you agree that that's in all of the notes for the plaintiffs?

12 A Yes.

13 Q Okay. And is that your initial on the bottom of -- let's just take
14 a look at the first page of Exhibit 1, page 1, Exhibit 1. Is that your initial
15 as guarantor?

16 A I'm sorry, my fingers don't work as good as they used to.

17 Q I understand.

18 THE COURT: That's okay. It also rained over the weekend,
19 which as we know in Las Vegas is strange. It makes things stick
20 together.

21 BY MR. LIEBRADER:

22 Q That's your initial as guarantor and on page 3, your signature
23 on behalf of Virtual Communication and as a personal guarantee. Is that
24 correct?

25 A Yes.

1 Q And those --

2 A Although, the -- that's not my initials but the signature is.

3 Q Okay. So you intended to sign it as a guarantor then?

4 A Apparently. These are in fact somebody's signatures.

5 Q And you understood that Ms. Minuskin was using this blank
6 pre-signed document to go out there in the community to raise money,
7 right?

8 A Correct.

9 Q And you -- there's no -- you're not disputing that these
10 plaintiffs invested the money that is called -- that is represented in these
11 promissory notes, right?

12 A Correct.

13 Q VCC received that money, paid interest on it, ran out of money
14 and then defaulted?

15 A Correct.

16 Q Okay. Can you turn to tab 8 please? This is a spreadsheet
17 that Mr. Yoder provided to us in discovery. And what it appears to be is
18 a name of the investors in the VCC promissory notes. And the reason I
19 say that is several of the plaintiffs are listed in here. For example, on
20 page 123, which is the first page of Exhibit 8, number 3, investor number
21 3 is Kendall Smith. And he's a plaintiff in this case it shows that he
22 invested \$20,000. Number 6, Mr. Kaiser \$62,000. Investor 18, Jackie
23 Stone, \$35,000. And then on entry number 34, there's Mr. Hotchkiss for
24 \$75,000. So my question to you is was this a schedule, something
25 internally that VCC kept track of to show, you know, which investors

1 invested, how much they invested and when the term of their promissory
2 note ended?

3 A Yes.

4 Q Okay. And who kept this. Was this you, Mr. Rodriguez, who
5 was responsible for this?

6 A I don't know, I don't recall.

7 Q But would it have been -- it would have been either you or Mr.
8 Rodriguez or Ms. Davis, correct?

9 A I would assume so.

10 Q And Ms. Davis really was just a low level -- I think you -- she
11 was -- there's an affidavit she was a low level -- I hate to use that term,
12 but she was administrative assistant and she worked directly for you. Is
13 that --

14 A She was a clerk, yes.

15 Q She was a clerk and she worked directly for you, right?

16 A Yes.

17 Q And she's also your granddaughter?

18 A She is.

19 Q Okay. Can you turn to tab 2, Mr. Robinson?

20 MR. GEWERTER: I'm sorry, David, what?

21 MR. LIEBRADER: Two.

22 MR. GEWERTER: Two, I'm sorry, I was talking. I can't do
23 that.

24 BY MR. LIEBRADER:

25 Q Let me know when you're there, sir.

1 A Yes, I've got it. Thank you.

2 Q Okay, in tab 2 I would like you to turn the second page, which
3 is Hotchkiss/Robinson 42.

4 A I have it.

5 Q You have it, sir?

6 A Yes, sir.

7 Q And it looks like you used the email Robin1031@aol.com in
8 the period 2012. Would that be fair to say?

9 A Yes, it appears that way.

10 Q And Mr. Rodriguez is svrodrig@aol.com?

11 A Correct.

12 Q Who is Julie Minuskin? Can you tell the Court who that is?

13 A She was the head of -- she was head of the company that
14 worked with Provident Trust.

15 Q Retire Happy ring a bell?

16 A Retire Happy, yes.

17 Q And she was the head of Retire Happy?

18 A She was.

19 Q And she was the company that VCC engaged to help raise
20 money?

21 A Yes.

22 Q Fair to say? And you had a significant amount of
23 correspondence with her by email back in the December 2012 period, is
24 that right?

25 A Uh-huh, yes.

1 Q And on page 42, let's look at the email on the bottom of the
2 page. There's -- actually there's an entry on the bottom and then there's
3 one above that. And it looks like these two emails were going back and
4 forth on December 7th of 2012. Do you see that?

5 A I see it.

6 Q Okay. And so now if we flip the page forward to the first page,
7 page 41 -- wait, I'm sorry, still on page 42. There was on the bottom of
8 page December 7th, 2012. And then the email in the middle you write to
9 Juli0: Please see the attached agreement that I have revised, number 7
10 and signed, thank you, Ron Robinson. Do you see that?

11 A Yes.

12 Q So I'd ask you to turn to page 44 please, a few pages in.

13 A Okay.

14 Q And do you see if it says Hotchkiss v. Robinson 44 on the top?

15 A I do.

16 Q Is that your signature on this document?

17 A It appears to be.

18 Q Okay. And do you recall an agreement between VCC and
19 Retire Happy to essentially raise money for the company?

20 A Yes.

21 Q And that's -- this document is that written agreement, is it not?

22 A It appears to be.

23 Q Okay. And under paragraph 1, services, it says company,
24 which is VCC hereby authorizes consultant on a non-exclusive basis to
25 identify potential investors interested in investing in the company's

1 promissory note with personal guarantee. The promissory note with
2 personal guarantee, was there anyone else besides you at VCC that
3 was personally guaranteeing these notes?

4 A No.

5 Q So that would have been referring to you? Promissory note
6 with personal guarantee by Ron Robinson?

7 A Yes.

8 Q And paragraph 3, initial investment. Should an investor invest
9 in a company's promissory note with personal guarantee then company
10 agrees to pay consultant 10% of the proceeds invested in the company,
11 so again promissory note with personal guarantee. Did you agree -- did
12 VCC agree to pay Retire Happy 10% of whatever funds they raised?

13 A Yes.

14 Q And did you pay them 10%?

15 A Yes.

16 Q And did you believe that they were a licensed broker dealer?

17 A They were dealing with Provident Trust and we were in
18 agreement that Provident Trust was actually the lender by virtue of the
19 fact that they represented all of the investors in our notes were
20 essentially Provident Trust.

21 Q Uh-huh.

22 A And as such, we had confidence in that it was --

23 Q Was Provident Trust raising the money or was Ms. -- was
24 Retire Happy?

25 A That's a good question, because at this point in time we've

1 questioned whether or not Provident Trust was actually leading the
2 investors into you said Retire Happy -- yeah Retire Happy.

3 Q Okay. Who prepared this agreement?

4 A [No audible response]

5 Q Did Ms. Minuskin bring it to you or is it something internally
6 you prepared?

7 A No, this was -- I think this was drafted by Ben Williams who
8 was her -- at that time was her partner. His name is on the bottom there.

9 Q He was also with Retire Happy?

10 A Yes.

11 Q Okay. Let's go back to page 42, two pages back. And you
12 had signed this on, looks like December 10th. And is this the agreement
13 that you were referring to with Ms. Minuskin on December 7th, please
14 see the attached agreement that I have revised and signed, thank you.

15 A [No audible response]

16 Q Or was there another agreement that you had with the
17 company?

18 A My recollection is that I remember sending her a revision on
19 something regarding the fact that she was not to utilize my guarantee on
20 anything that didn't have my initials on it.

21 Q Uh-huh.

22 A Because she blank signatures.

23 Q And when was? Would that have been --

24 A I don't remember the date, but I do remember I don't know
25 whether this i directly involved with that. Because this was done on --

1 Q It looks like they signed it on December 10th of 2012. And
2 that's the reason I was asking if this was what you referring to in your
3 email with Ms. Minuskin on December 7th.

4 A You know, I can't answer that question.

5 Q It was a long time ago.

6 A I just don't know.

7 Q But it right around the same time?

8 A Yeah.

9 Q And -- okay, let's turn to page 41, which is the first page of
10 Exhibit 2. And this appears to be an email that you sent,
11 Robin1031@aol.com to Julie Minuskin, December 10th of 2012. Can
12 you read it for us?

13 A That's from Robin1031 to Julie Minuskin, RE: Agreement.
14 We are in complete agreement with our communication with you -- with
15 you -- I guess that should have been your investors. Vern will be direct
16 contact. In addition, we'd be open to make a presentation of our
17 technology at any time and with your investors, excuse me. Naturally,
18 we are open to any suggestion that you might have in accomplishing
19 this, so don't hesitate in making this clear to your contacts. In addition,
20 should your investors wish to contact me directly, I would be happy to
21 meet with them and show them my accountant's prepared current
22 financial statement. My present net worth is \$17,690,000 which is
23 represented in cash and equities both real and personal. Ron Robinson.

24 Q And this an email that you sent to Ms. Minuskin December
25 10th of 2012. Is that right?

1 A It appears to be, yes.

2 Q Okay. Question for you, why did you put down -- why were
3 you writing that you would show your accountant's prepared current
4 financial then talk about a net worth of \$17,699,000 if you weren't
5 intending to guarantee the note?

6 A Well --

7 Q Were you just bragging how rich you were, what's the reason?

8 A My thinking -- well yeah, I guess it was. It was to influence the
9 situation naturally. And I had intended to guarantee some of them but
10 not all of them.

11 Q How many were you intending to guarantee?

12 A It was -- that's the reason why I asked her to allow me to put
13 initials on anyone she was going to use, because I wanted to be in a
14 position to determine that factor.

15 Q Uh-huh.

16 A One of the reasons why I wrote this was to have her send
17 those more deeply pocketed, so to speak to me, so I might be able to
18 satisfy them but she never did.

19 Q She just went ahead and just kept raising more money and
20 more money, right, with that same promissory note?

21 A Right.

22 Q Okay. I want to ask you Vern was going to be the direct
23 contact with the investors. You wrote that, correct? And what was the
24 reason for that?

25 A Well he's much more loquacious than myself and he was

1 knowledgeable. I think I lack the personality to deal with some of those.

2 Q Okay. And you refer to these people as investors, right?

3 These were investors in VCC, is that right?

4 A Certainly.

5 Q And their money was being pooled for the common goal of
6 growing the company?

7 A Which it did.

8 Q Which it did. And they expected to get a 9% rate of return in
9 exchange for their -- the investment of their money?

10 A Yes.

11 Q Did they have to do anything? Did they have to come down
12 and do coding or anything or they can just sit back and collect the 9%
13 interest?

14 A Totally passive.

15 Q Totally passive, okay. And can you turn to page 45 in Exhibit
16 2 please.

17 A I have it.

18 Q Okay. This is the promise -- this is the financial statement that
19 you referred to in your email to Ms. Minuskin?

20 A Yeah, I -- apparently, yes.

21 Q Okay. Page 46, which is the second page shows total assets
22 of \$31,263,500, is that right?

23 A Yes, at that time.

24 Q And on the last page, forgive me, it looks like it's blotted out a
25 little bit. But I think you wrote \$17 million so that would have been -- was

1 that accurate at the time that you wrote that to Ms. Minuskin, the
2 \$17,699,000 figure?

3 A Up until 2008 it was.

4 Q Okay. Well this would have been in 2012, sir.

5 A I understand.

6 Q So was it accurate in 2012 when you wrote this email?

7 A It was accurate.

8 Q Okay.

9 A 2008 it all changed with the depression.

10 Q Okay. Can you turn to the next page, to page 48 please?

11 This is an -- is that your signature on this page?

12 A I haven't got there yet.

13 Q I'm sorry, sir, page 48. It appears to be an agreement that Mr.
14 Rodriguez signed and you signed as well. And it's dated the 15th of
15 January 2013, right around the beginning of the fund raise. And the
16 agreement is between RJ Robinson, you, and Virtual Communications.
17 It says whereas VCC will be obtaining investors for the funding of
18 Wintech LLC, a wholly owned limited liability company of VCC, and such
19 investments will be disclosed to the investors that the funds will be
20 utilized for the development of the technology of Wintech and whereas
21 RJ Robinson will be responsible for payment to the investors utilizing his
22 financial statement and credit rating to persuade the investors to make
23 this investment. Now therefore the parties agree that VCC shall issue a
24 note to argue Robinson for the total amount of investor funds. Said note
25 to contain an interest provision of 9% annually and the principal amount

1 of the note shall be determined at the conclusion of the funding period in
2 July of 2014 or earlier as the case may be.

3 So it looked like you were -- in the beginning of January 2014
4 you were anticipating at least a 16-month fund raise. Is that right?

5 A I guess, yes.

6 Q And this is VCC agreeing to compensation you in exchange
7 for guaranteeing the note? That's what --

8 A Correct, it was an onset.

9 Q That's what this is, okay. And it talks about using your
10 financial statement and credit rating to persuade the investors to make
11 the investment. You understood that investors were relying -- they were
12 certainly impressed with a man with a \$17 million net worth that's
13 standing by to guarantee their investment?

14 A Yes.

15 Q You understood that?

16 A Yes.

17 Q Turn to tab 4 please, sir. Your deposition was taken a couple
18 -- maybe a year or two years ago. It's been a while.

19 A Been three years.

20 Q Maybe it's three. But you said that Mr. -- you're familiar that a
21 PowerPoint presentation was prepared and that was sent to Ms.
22 Minuskin to show to investors to persuade them to invest?

23 A Yes, Frank created that.

24 Q Frank created that. And you said at the time I asked you if
25 you -- how your guarantee got into the PowerPoint presentation and you

1 testified under oath that Mr. Yoder put it in there without your
2 permission?

3 A He did.

4 Q Okay. Can you turn to page 60, which is I think the 4th page of
5 Exhibit 4.

6 A I have it.

7 Q And this an email from Mr. Yoder, again December 2012 the
8 beginning of the fund raise, to Ron Robinson asking you if this was okay.
9 Terms of securities, and here's like a little picture from -- and we'll go
10 into the -- from the PowerPoint in a second. But it says here in terms of
11 securities and they were secured. Notes are secured by a promissory
12 note. The guarantor of the note is Mr. RJ Robinson. And this is Mr.
13 Yoder sending you this email. So clearly you knew that he was putting
14 this information in the PowerPoint presentation and why did you permit it
15 if you didn't intend to guarantee the note?

16 A I was very cavalier at that point.

17 Q Cavalier meaning you didn't pay attention -- not responsible?

18 A I had problems coming out of my ears.

19 Q I'm sorry?

20 A I had a lot of problems during that period of time, personal and
21 otherwise.

22 Q Okay. If you turn back a page to page 59.

23 A It was essentially a mistake.

24 Q I'm sorry. I'm sorry, turn to page 61 because this is kind of
25 where it starts. On the top of page 61 it says in a message dated

1 12/17/2012 at 11:33 a.m. Frank Yoder writes: What do I need to change
2 on the PowerPoint? I can't tell what it is from the email below. And you
3 say -- it gets cut off on the --- from page -- the bottom of page 60,
4 Robin1031 to Frank Yoder December 17th, 2012, three minutes later
5 you're responding. And on the top of the page: Frank just change the
6 24 month to 18 month for the option to extend for an additional 6
7 months. So of all the things you must have reviewed the presentation
8 and just decided this is the only thing you wanted changed. But decided
9 not to say I don't intend to guarantee these promissory notes. You just
10 changed the term.

11 A Well I think the key word there is all.

12 Q I'm sorry?

13 A All of the notes. I didn't intend to guarantee all of the notes.

14 Q Didn't intend to guarantee them. Okay.

15 A It was to be selective but --

16 Q How were the investors supposed to know?

17 A This kind of slipped through the cracks and --

18 Q And then if we turn to page 59, and it is hard to read. And Mr.
19 Yoder will come in. This is a document that he provided to us. It looks
20 like on the top of the page it's a continuation of that email. Frank just
21 change the 24 months to 18 months. And then on the top of the page,
22 Ron is this okay? And you apparently wrote back to him, looks good to
23 me.

24 THE COURT: Can you read that sir?

25 MR. LIEBRADER: Yes, ma'am. Robin1031 to Frank Yoder,

1 12/27/2012, 2:23 p.m., looks good to me.

2 BY MR. LIEBRADER:

3 Q And please turn to -- now to page 58, which is just the page in
4 front of that one towards the front of the exhibit tab. Here's another
5 email that you're sending to Ms. Minuskin, December 17th at 2012. Julie
6 please see attached as captioned. And turning to page 57, which is the
7 first page of tab 4, Ms. Minuskin is getting back to you and Mr.
8 Rodriguez. Thank you. Can you please make sure the PowerPoint
9 reflects this change as well? Is it -- I guess my question is -- there looks
10 like there was a lot back and forth to make sure you got this PowerPoint
11 presentation correct, right?

12 A As I recall such was the case.

13 Q And it looks like Mr. Rodriguez was involved as well, right?

14 A I don't recall that being the case.

15 Q Well let's look at page 57. I'm sorry, yeah page 57 in tab 4.

16 A Well what you say may be correct. I just don't recall it.

17 Q Okay. Okay. Turn to page 63 please. It's in that same exhibit
18 and it's the actual PowerPoint presentation. And this is the PowerPoint
19 presentation that Mr. Yoder helped to prepare for the company?

20 A Yes.

21 Q And if you turn to the next page, page 64, it contains some
22 language. This presentation contains forward looking statements within
23 the meaning of section 27(a) of the Securities Act of 1933 and section
24 21(e) of the Securities Act of 1934. Where did -- why did you put that
25 language into this PowerPoint? That's some pretty specific stuff dealing

1 with the securities laws. I'm wondering why you decided to put that in.

2 A I don't remember even putting it in.

3 Q And you were the CEO in charge of all financial decisions for
4 the company, right? You had to sign off on this PowerPoint or did Mr.
5 Rodriguez sign off on it?

6 A Nobody signed off on it.

7 Q It looks like there was a lot of back and forth to make sure it
8 was right. Whose idea was it to put disclosure language concerning the
9 securities laws in it?

10 A I have no idea. It must have been Frank. He was pretty --

11 Q Mr. Yoder?

12 A Yeah, Frank Yoder.

13 Q Okay. We'll have a chance to ask him that tomorrow.

14 A Yeah.

15 MR. GEWERTER: Well objection. Then answered the
16 question -- he was cut off in answering his question, Your Honor.

17 MR. LIEBRADER: I apologize.

18 THE COURT: All right. Let him --

19 BY MR. LIEBRADER:

20 Q What about Mr. Yoder did you want to say?

21 A Oh, apparently it was Frank. It's a -- been so long, I don't
22 remember why it was in there.

23 Q Okay.

24 THE COURT: All right. For the record that objection was
25 sustained. And the witness has now answered the question.

1 BY MR. LIEBRADER:

2 Q Can you turn, Mr. Robinson, to page 74 also in tab 4.

3 A I have it.

4 Q Okay. These are -- these notes were referred to as securities
5 not once but twice in this PowerPoint presentation slide, why was that?

6 A Well I think securities is kind of generic. Not necessarily
7 specific.

8 Q Okay. But you're not disputing that that was contained in this
9 PowerPoint presentation and two others, correct?

10 A I'm not disputing anything.

11 Q And you were in a position to review and did review these
12 PowerPoint presentations, correct?

13 A How many years ago was that?

14 Q Well I think 2012 --

15 A 14.

16 Q -- and 2014.

17 A Yeah, it's 2020 now it's been a lot of years.

18 Q Certainly was -- and it but it was your job to review this
19 correct? I mean, wasn't that your responsibility as CEO in the
20 company?

21 A Counselor, I'm 89 years old and I don't even remember some
22 things that happened recently, let alone that many years ago.

23 Q But the question was it was your job to sign off this, correct?

24 A If you say so, yes.

25 Q Well do you say so? Would you agree to that as the CEO of

1 the company, was it your responsibility to sign off on this document
2 which was to be shown to perspective investors?

3 A We all worked together. I didn't have to sign off on anything.

4 Q So is it your position again that Mr. Yoder created this without
5 your permission and knowledge?

6 A He created it, but we all reviewed it, all of us did.

7 Q Okay, so --

8 A Yeah.

9 Q So you did review it and you were ok with this being used?

10 A Apparently.

11 Q Okay. Go to tab 6 please. I'm sorry, sir, tab 5.

12 A I have it.

13 Q Sorry, just give me one second please. We'll come back to
14 that, I'm sorry, maybe during the break. I'll keep moving.

15 A By the way, this indicates what I had testified earlier, that I
16 wanted to initial all of those before they were utilized.

17 Q Right, and so -- okay, we can cover this. This appears to be in
18 September 2013, so this would have been 9 months into the offering --
19 right, no, actually the offering began in December of 2012 or was it
20 January 2013? I'm sorry. January 2013, so this would have been 9
21 months into the offering and here is an email in the middle of the page
22 from Ms. Davis to Ms. Minuskin, please see that attached doc X with
23 Ron's two signatures. It does not have his initial on each page, as we
24 would prefer he does each of those after the investor info is entered.
25 This is what you were referring to, correct?

1 A That's what I testified to, yes.

2 Q Testified to. And if we turn to now page 80, same exhibit,
3 here's an email the next day, the very next day from Ms. Davis to Ms.
4 Minuskin: For the sake of us not having to deal with different schedules
5 attached is a new doc X promissory note for VCC with, capital with, the
6 initials and signatures.

7 Now at your deposition in addition to saying that Mr. Yoder
8 acted without your authority you also said that Ms. Davis sent this
9 promissory note without properly -- without proper authority. But here it
10 shows that -- and so when I asked her about that at the *Waldo* trial, I
11 said why did you do that? And she said well, no, I did send -- Ron did
12 sign -- initial and sign these documents. And she pointed to this
13 September 18th document. And I asked her, how is that possible? She
14 said well I sent it to him. He signed off on it and he sent it back to me.

15 So doesn't that -- doesn't this document here, page 80, prove
16 that you knew that money was continuing to be raised and you signed
17 off on and initialed this document?

18 A I guess.

19 Q So you did authorize the use of a blank document for Ms.
20 Minuskin to use to raise money from investors?

21 A Seems there's some real confusion here.

22 Q Well I mean there's no confusion. You --

23 A It's confusion in my mind.

24 Q Because well maybe in my mind too, because on September
25 17th, Ms. Davis is telling Ms. Minuskin that you prefer -- the signatures

1 are there, but it does not have his initials on each page. But then the
2 next day Ms. Davis is sending Ms. Minuskin your -- a document, a pre-
3 signed document with your initials and your signature.

4 A Or perhaps what she sent was just my signature and not the
5 initials.

6 Q Well that's not what you --

7 A It might have been a typo.

8 Q That's not what she wrote here. It says for the sake of us not
9 having to deal with different schedules --

10 A Scribner's error, how about that?

11 Q -- new doc X promissory note for VCC with the initials and
12 signatures, capitalized with.

13 A Yeah.

14 Q So are you saying that she made a mistake?

15 A Yeah.

16 Q And that you didn't know about it?

17 A I don't remember anything.

18 Q Are you saying -- are you again --

19 THE COURT: Counsel, let him answer -- answer the
20 question. Ask the question. So he wasn't finished answering. Go
21 ahead and finish answering your question.

22 BY MR. LIEBRADER:

23 Q Are you -- go ahead.

24 A I don't remember precisely what occurred, but I would assume
25 that it was error.

1 Q Are you saying again that Ms. Davis acted without your
2 permission and authority?

3 A Not necessarily.

4 Q That she was -- she somehow put your initials on this
5 promissory note without you knowing about it?

6 A She may not have put the initials on there. Maybe she sent
7 them to me and all I did was sign them, not initial them.

8 Q Okay. So what would you say -- would you agree that Ms.
9 Minuskin in September of 2013 had a signed initialed promissory note
10 from VCC that she used to solicit investors?

11 A No, because we went back on the notes, I recall this, and we
12 found that that was not my initials on those notes.

13 Q Who found that?

14 A I don't -- who found -- I found that.

15 Q Uh-huh, and these are not -- you're saying that Ms. -- did you
16 have a -- okay, let -- this is a new defense now. Did Ms. Davis -- did you
17 discuss this with Ms. Davis?

18 MR. GEWERTER: I'm going to object to the characterization.-

19 THE WITNESS: It's not a new defense. It just was never
20 brought up before.

21 MR. GEWERTER: It's argumentative.

22 THE COURT: Hold on.

23 MR. LIEBRADER: I never heard --

24 THE COURT: Counsel.

25 MR. LIEBRADER: I never heard --

1 THE COURT: Counsel --
2 MR. LIEBRADER: -- I haven't heard this.
3 THE COURT: Counsel, there's a pending objection.
4 MR. LIEBRADER: What's the --
5 THE COURT: Objection. What is the objection?
6 MR. GEWERTER: It's argumentative and he's testifying.
7 THE COURT: All right.
8 MR. LIEBRADER: Let me rephrase --
9 THE COURT: I'm going to overrule the objection. And I'll
10 note again that what counsel say is not testimony.
11 MR. LIEBRADER: Okay.
12 THE COURT: You may ask the question.
13 MR. LIEBRADER: Just -- I'm sorry, Your Honor. I just want to
14 take -- I want to quote Ms. Davis and see if we can kind of --
15 BY MR. LIEBRADER:
16 Q You testified at your deposition that the signatures that were
17 provided to Ms. Minuskin were done without your permission and you
18 said I didn't given any permission of anything. And I asked you, so you
19 do you know why Ms. Davis was providing this to Ms. Minuskin in
20 September of 2013.
21 Answer: I have no idea.
22 Question: She was clearly doing it though sir, without your
23 permission, is that correct?
24 Answer: Yes. I was unaware of it totally.
25 Question: And if you had become aware of it or known about

1 it at the time, you would not have permitted it. Is that right?

2 Answer: That's correct.

3 So is it your testimony that you did not know --

4 A What was the date of that?

5 Q Well this is your deposition in the *Waldo v. Robinson* case.

6 A What date was that?

7 Q June 26th, 2018. No, I'm sorry, the deposition was sometime
8 in 2017. Does that make a difference? It's under oath testimony.

9 A Only the memories over a period of years do fade.

10 Q So I asked this of Ms. Davis, because this issue of her acting
11 without your authority of course is troubling and it may shed some light.
12 So at the trial in this -- in the *Waldo* case I asked her, and so sometime
13 would it be fair to say, sometime between the 17th and 18th and this is of
14 September, these two emails, you went to Rob and got his initials on this
15 document?

16 She testified: Yes, and on the -- on the -- before they started
17 raising funds yes.

18 I said: No, this was well -- this was September 2013, so they
19 were already nine months into the fund raise.

20 She said: Oh well then if they were 9 months into, then yeah
21 this was the one that put -- that we put that both initials because -- and
22 signature because Julie had asked us to.

23 Question to her: So you went to Ron and told and got him to
24 initial this document and then you sent it to Ms. Minuskin?

25 Answer: Well I sent it to him. I didn't get him to initial it -- I

1 had sent it to him and if he -- if he chose to sign it, yes.

2 So that seems -- that's your granddaughter testifying that she
3 sent the promissory note to you for your initial and she agreed. She said
4 Ron initialed it and sent it back to me. Was she telling the truth when
5 she testified that way?

6 A I should imagine.

7 Q Okay.

8 A But that whole situation is rather vague, you'd have to agree.

9 Q Okay. No, I just want to make sure that you agree with her --
10 under oath testimony --

11 A I will always agree with my granddaughter.

12 Q That's a good idea, sir, thank you.

13 Turn to tab 7 please, Mr. Robinson. This is an email from
14 Alisa Q and that's Ms. Davis, correct?

15 A Correct.

16 Q And she's sending this to Ms. Minuskin, you're being copied
17 on it as well as Mr. Rodriguez. And she says: Julie, please review this
18 with Josh and let us know when his potential investor can speak with
19 Vernon on the phone.

20 So this was September of 2014, which was now what?

21 A A couple of years.

22 Q Yeah, about 19 months into the fund raise?

23 A Yeah.

24 Q And you're still raising money and Ms. Minuskin is making you
25 aware of it and she's making Mr. Rodriguez aware of it. Is that right?

1 A Was this sent to me?

2 Q Well you were copied on it. It looks like it's between Ms.

3 Davis, who was I guess she worked for you, right? She would take

4 orders and instructions from you?

5 A Yes.

6 Q Did she work for anyone else at VCC?

7 A Well she worked with all of us, yeah.

8 Q But was she -- she was I think you said she was your clerk or

9 administrative assistant. Did she do -- did she perform that role for

10 anyone at the company?

11 A She worked with everybody.

12 Q With everybody, okay. But you were copied on this email and

13 it says please let us know when the potential investor can speak with

14 Vernon the phone. Was that one of Mr. Rodriguez's duties to maybe

15 speak with investors about the fund raise?

16 A Not necessarily, any one of us could have done it.

17 Q But he certainly was authorized to do it?

18 A Well, all of us were authorized.

19 Q Okay.

20 A There was only four of us running the whole show.

21 Q And if you can turn to -- turn to tab 107 please.

22 A You mean page 107?

23 Q Yes, sir, I'm sorry.

24 A It's all right.

25 Q Tab 7, page 107. And it's just the first page of the PowerPoint

1 presentation.

2 A Oh, yes.

3 Q Still being used in 2014. And if you go from there to page 121
4 please?

5 A 21. All right.

6 Q Do you have it, sir? And this again, this same slide it's a little
7 bit different because the termination date is 18 months from the
8 promissory note execution unless extended. But again, still referring to
9 the investment as securities and the term of the securities and also still
10 listing you as the guarantor of the promissory note. Do you see that?
11 But it appears that your net worth had changed by then. It looks like it's
12 gone down from \$17 million down to \$16,723,000. And I understand
13 that Mr. Yoder created these PowerPoint presentations. Where did he
14 get this information from? Did he make it up?

15 A From me.

16 Q He got it from you?

17 A Yes.

18 Q Okay. So you're aware that this PowerPoint presentation
19 needed to be updated from time to time, is that right?

20 A Yes.

21 Q Can you turn to tab 11 please?

22 A Let me interject something here. You had an emphasis on the
23 word securities. Investment would have been best to use but it's
24 synonymous with securities.

25 Q Are all investments securities?

1 A Almost all, yeah.

2 Q Securities really is a term of art like the Nevada Statute
3 doesn't --

4 A Well it's a generic word, but it could have been -- the word
5 could have been investments. And investments are not always all
6 securities.

7 Q Right.

8 A And all securities are not always investments totally.

9 Q So why put the language for the Securities and Exchange Act
10 of 1933 in there?

11 A I don't know, you'd have to ask Frank that.

12 Q Frank put that in there. Okay. Yeah, we'll ask him that
13 tomorrow. I think you testified in the *Waldo* trial, I just want to kind of
14 speed things up. Tab 11 is a certificate from the Secretary State of
15 Nevada showing that there were no exemptions or registration for VCC
16 Securities filed with the state.

17 A Correct.

18 Q And I think you testified at the *Waldo* trial that that was the
19 case and you thought maybe it was Retire Happy's job to do that?

20 A Well they represented to us initially that they were license and
21 they had all the bona fides that you would need.

22 Q Uh-huh.

23 A But I reality we were not concerned with it, because we were
24 dealing with a trust company.

25 Q Uh-huh.

1 A And as you recall, I think I testified to that effect that the trust
2 company was exempt from the securities laws.

3 Q Right, but except Provident Trust is just their name, they're
4 actually a custodian. So are custodians exempt from securities laws?

5 A Well they're still licensed by the state under the banking laws.
6 The banking laws, they're exempt from the securities laws.

7 Q Well do you have any support for that other than your personal
8 opinion?

9 A Well what's -- what would you want?

10 MR. GEWERTER: I'm going to object. It calls for a legal
11 conclusion. We can --

12 THE COURT: It's --

13 MR. LIEBRADER: Do you have any --

14 MR. GEWERTER: -- argue it in a brief at some point.

15 THE COURT: Counsel, I'm going to overrule that objection. It
16 doesn't call for a legal conclusion. He asked him if he had -- what he
17 was relying on in support of that testimony.

18 MR. LIEBRADER: Yes.

19 THE COURT: So you can answer that question. What are
20 you relying on?

21 THE WITNESS: The banking laws of the State of Nevada.

22 THE COURT: Okay.

23 BY MR. LIEBRADER:

24 Q In your Answer to this case or at any time during this case
25 have you contented that these transactions or this issuance of securities

1 was exempt?

2 A You'll have to say that again.

3 Q At any time during the whole pendency of the White or
4 Hotchkiss case, which has been consolidated, have you or your attorney
5 asserted that these -- the transactions, any individual ones or the
6 offering was exempt?

7 A In the previous case, yes.

8 Q But not in this case?

9 A Well this is the first time on the stand with this case.

10 Q Okay. I'll just -- I'll let you know as a statement of fact that no
11 exemption was ever claimed.

12 THE COURT: Counsel, I'm going to --

13 THE WITNESS: Well you don't have to claim it.

14 THE COURT: Hold on. Hold on. That's a different question.
15 You're saying an exemption was claimed versus you're saying claimed
16 in the lawsuit itself or claimed at the time of the -- this is a question just
17 for clarity of the record.

18 MR. LIEBRADER: Sure, yeah, well it kind of moved on. We
19 started with the statement from the state of Nevada, that there was no
20 application for registration of securities and no notice of exemption was
21 ever filed. But the different -- the question I asked Mr. Robinson was,
22 you know, why -- if these were exempt transactions, why didn't you
23 assert an exemption, a transaction exemption or something as a
24 defense in this case?

25 THE COURT: That question wasn't asked, so ask that

1 question.

2 BY MR. LIEBRADER:

3 Q Okay. So, yeah, Mr. Robinson, how come?

4 A I think it was.

5 Q It was not as an affirmative defense, no. I mean, I realize
6 you're not a lawyer, but I'll tell you that it wasn't. So what exemption, I
7 mean, since you seem to be familiar with it, what exemption would apply
8 here?

9 A I think 144.

10 Q Rule 144 of the Securities Act, okay. So then you would
11 agree then that these were securities?

12 A No, they're exempt. They weren't securities.

13 Q Exempt, as a transaction, no, that -- I'm not going to argue
14 with you. Thank you.

15 Also in tab 11, there's an article of incorporation on page 140
16 and if you could turn to that page please. And this appears to be the
17 filing with the Secretary of State dated January 26th of 2012. Do you see
18 that, Mr. Robinson?

19 A I do.

20 Q And it looks like under paragraph 4 names and addresses of
21 the Board of Directors and Trustees, Ron Robinson and S. Vernon
22 Rodriguez. And you were the two original directors of the company,
23 correct?

24 A This is, yeah, VCC.

25 Q Yes.

1 MR. GEWERTER: I'm going to object. That's not a complete
2 document. It goes on for more than one page. There's page two of that
3 document.

4 MR. LIEBRADER: Yes.

5 THE COURT: All right.

6 MR. LIEBRADER: There is a page 2, and Directors and
7 Trustees are Vernon Rodriguez, Ronald Robinson and Ronald
8 Robinson.

9 THE WITNESS: Mike Yoder and Frank Yoder --

10 MR. LIEBRADER: Oh, I'm sorry, yes, Mike Yoder -- indeed,
11 Mike Yoder and Frank Yoder.

12 MR. GEWERTER: We have incomplete statements here,
13 Your Honor.

14 MR. LIEBRADER: Yes.

15 THE COURT: All right. And I see that. That goes onto 143 --

16 MR. GEWERTER: 141.

17 THE COURT: Oh, wait.

18 MR. GEWERTER: Page 141.

19 MR. LIEBRADER: All right, Mr. --

20 THE COURT: Yeah, but it goes on all the way to 144.

21 MR. GEWERTER: Oh, I'm sorry, correct, Your Honor.

22 THE COURT: Yeah, --

23 MR. GEWERTER: I didn't want the misstatement --

24 THE COURT: Actually it keeps going yeah, so I see it's a --

25 MR. LIEBRADER: Yeah, there's quite a --

1 THE COURT: -- multipage document.

2 MR. GEWERTER: There's four people not two people, my
3 concern.

4 MR. LIEBRADER: Yes.

5 BY MR. LIEBRADER:

6 Q Mr. Robinson, can you turn to tab 12 please? And at some
7 point it appears to be at some point in September 2014 there were some
8 consolidate financial statements that were put together through VCC, is
9 that right?

10 A Are you referring to the certified audit statement?

11 Q Well you -- maybe you can tell me what page -- tab 12, page
12 153 is since it's a VCC document.

13 A 153.

14 Q It's the first page of tab 12. I guess the question is why was
15 this prepared?

16 A I'm sorry, what was the question?

17 Q Why was this prepared, sir?

18 A Why?

19 Q Yes.

20 A I have no idea.

21 Q Can you turn to page 158 please? And about two thirds of the
22 way down the page or just slightly below the middle ring, there's a
23 category that says financing activities. Do you see that in bold?

24 A And that was on 158, did you say?

25 Q Yes, sir. Do you see financing activities?

1 A No, I don't. But maybe I'm missing it somewhere on -
2 Q It's a little bit underneath the middle ring.
3 THE COURT: If you want to step up and maybe point it out to
4 him.
5 MR. LIEBRADER: Sure, thank you, Your Honor.
6 THE COURT: Sure.
7 THE WITNESS: Net cash used in investing activities? Is that
8 the one right here?
9 MR. LIEBRADER: Financing, right there.
10 THE WITNESS: Oh, yeah, all right. I apologize.
11 THE COURT: That's all right.
12 BY MR. LIEBRADER:
13 Q And it says proceeds from notes payable, which is the last
14 entry in that paragraph, do you see that?
15 A Yes.
16 Q And it says \$4,514,750?
17 A Yes.
18 Q Proceeds from the notes payable would have been the
19 promissory note fundraise, right?
20 A I don't know whether the net cash refers to there would be
21 exclusively to the fundraising. It could have been attributable to other
22 things, cash sales, things of that nature.
23 Q Did you have any other notes payable issued by the company,
24 or was this the only promissory note offering that was done?
25 A To the best of my knowledge, yes.

1 Q And so would it be accurate to say as of September 14th, Ms.
2 Minuskin might have raised \$4.5 million for the company?

3 A Very possible.

4 Q And can you turn to 163 -- I'm sorry, page 163 in tab 12.

5 A 163.

6 Q And specifically note 8 in the middle of the page, do you see
7 that?

8 A I do.

9 Q And it says the company is entered into a series of notes
10 payable with several unrelated parties. All notes containing identical
11 terms from the date of consummation. The notes are unsecured bearing
12 an interest rate of 9% and due within 18 months from the execution date
13 with an option to extend for 6 months. Those are our notes that we're
14 talking about, right, the \$4.5 million raised by Ms. Minuskin?

15 A Yes, I would assume.

16 Q And it says the notes also carry a late fee of 5% after a 5 day
17 grace period and are conditionally guaranteed by an officer of the
18 company. So I you did not intend to guarantee these notes or going to
19 guarantee one or a certain amount, why in September of 2014 after \$4.5
20 million was raised does it state this in this financial statement that the
21 notes were conditionally guaranteed by an officer of the company?

22 A I can't comment.

23 Q Was that you? Was there another officer of the company that
24 was guaranteeing these notes?

25 A No, just me.

1 Q And who had to sign off on these financial statements, you?

2 A This is not the audited -- certified audited financial statement

3 that we -- that you referred to. We had a -- we hired an auditing

4 company to come in, independent auditing company and give us a

5 certified financial statement.

6 Q Well who prepared this document?

7 A I have no idea. Could have been our CPA.

8 Q Okay. And where would he have gotten this information under

9 note 8?

10 A I don't know.

11 Q From you or Mr. Rodriguez?

12 A I don't know.

13 Q Or Ms. Davis?

14 A I don't know.

15 Q Turn to tab -- turn to tab 13 please, Mr. Robinson.

16 A Yes.

17 Q And this is that private placement memorandum dated

18 February of 22, 2016, right?

19 A Yeah.

20 Q And it was prepared in anticipation of raising some additional

21 funds to hopefully retire the promissory notes?

22 A Yes.

23 Q And we already looked at page 185. Turn to page 188 please.

24 It says security ownership of management in certain security holder,

25 common stock, daughters of Rob Robinson owned 11 million shares

1 owned via Scotsman's Trust, an irrevocable trust of which Mr. Robinson
2 is the trustee. What did -- why did you own shares in the company
3 through the Scotsman's Trust?

4 A Why?

5 Q Yes.

6 A Well it's called estate planning.

7 Q Okay. And what is the Scotsman's Trust?

8 A Irrevocable spend thrift trust.

9 Q Okay. So the creditors can't attach assets that are in there,
10 correct?

11 A Well that's your legal opinion.

12 Q Okay. But you did it for asset protection purposes, right?

13 A No, at that point in time, that goes back to 1996. It was estate
14 planning. I've got two daughter, two granddaughters, four great
15 grandchildren. And at my ripe age, I think I needed to plan for that.

16 Q Understood.

17 A I wanted to eliminate the possibility of probate and all the
18 problems that go along with it.

19 Q Understood. Can you turn to page 192 please? These are
20 consolidated balance sheets that were included in this private placement
21 memorandum. You're familiar with the private placement memorandum
22 or what that is, Mr. Robinson, right?

23 A Did you say 192? I'm sorry.

24 Q Yes, 192.

25 A In answer to your question, yes, I'm familiar with -- we did this

1 in anticipation of the revised jobs act that allowed the ability to raise
2 capital without having to go through a full S-1 offering.

3 Q Uh-huh.

4 A Which is a real proctology exam, the best I can put it.

5 Q Okay. Page 192, sir, about two thirds of the way down there's
6 a column that says liabilities. It's bold. Do you see that? Also on page --
7 still on page 192, sir.

8 A I'm sorry what was the --

9 Q 192, liabilities.

10 A 192 -- oh, liabilities.

11 Q And do you see it says notes payable, current portion,
12 \$4,536,750?

13 A Yes, now this was on the audited sheet, I can see that.

14 Q Okay. And that's as of December 31st, 2015, right? And that
15 appears to be --

16 A Have taken some of the financial statements from the audited
17 financial along with the other one that was done, which was unaudited?

18 Q Well that was separate. That's a separate exhibit. So if you're
19 saying that these were audited financial statements in tab 13, I'll take
20 your word for it.

21 A All right.

22 Q You were in charge back then. December 31st 2015 there was
23 no more funds being raised right? Didn't VCC go into default in
24 February of 2015? I think we've stipulated to that, so I don't want to
25 argue with you over it.

1 A I'm not going to argue it, yeah.

2 Q So by December 31st 2015, it appears that the total amount
3 raised by VCC was \$4,536,750, right?

4 A That seems correct.

5 Q Okay. And now we turn to page 194, couple pages in. So, I
6 want to ask you a question. Where was VCC getting the money to pay
7 the 9% interest to these folks? Because it doesn't look like the company
8 was generating much income.

9 A Well it was generating sales.

10 Q Uh-huh.

11 A And then generating sales.

12 Q But those --

13 A And I might interject something. It's very profitable right now.

14 Q Okay. Well, that's good to hear.

15 A And that's a good thing for those that received shares from the
16 Chapter 11 bankruptcy, because they're going to be able to market
17 those shares at probably an increased amount above the \$1.

18 Q Uh-huh. Can --

19 A And that's the reason why I invested too.

20 Q Can Mr. Hotchkiss sell his shares today for a \$1?

21 A Probably, restricted shares on an operating company such as
22 our there's a good market for it.

23 Q Do they trade on a public exchange?

24 A It doesn't trade on a public exchange, but it's going to.

25 Q Are they restricted shares?

1 A The preferred is restricted.

2 Q So he couldn't sell those?

3 A No, there's -- you see they were issued both common stock

4 for the accrued interest.

5 Q Uh-huh.

6 A And preferred stock or the principle.

7 Q Where --

8 A Because principle is restricted by virtue of the conversion rate.

9 Q Where could he sell those shares today?

10 A He could go on the market right now and --

11 Q Where out in front of the courthouse?

12 A -- look on the internet.

13 Q What market?

14 MR. GEWERTER: Your Honor, I'm going to object.

15 THE COURT: Counsel and witness, I'll remind you both to let

16 each other finish.

17 BY MR. LIEBRADER:

18 Q What market, sir, is the question? Where is the market?

19 A Well on the internet and look for companies that --

20 Q Any particular site?

21 A -- acquire restricted shares in up in coming companies.

22 Q And any idea what they would pay for shares in VCC?

23 A Oh, I can't speculate on that.

24 Q Ten shares for a penny, any idea?

25 A Well that's what you say.

1 Q Well I -- you talked about a market so I was just wondering if
2 you're familiar with that market.

3 A Well what they do is they analyze the company and there's a
4 lot of data on the company on the internet. And they see that the
5 technology is becoming very, very attractive. I mean, when you look at
6 Konica Minolta, which is a partner of VCC, that encourages a lot.

7 Q Okay, so back to page 194.

8 A And I'd also mention if I could interject something here, as part
9 of a sales thing. If you don't mind.

10 Q Is this a sales -- I'm not buying, so don't try to sell me any.

11 A Well there are investors right now that will invest in the
12 company, but they won't invest as long as Mr. Rodriguez is named in
13 your lawsuit. And it's preventing the company from raising a lot of
14 capital that could be beneficial to everybody.

15 Q We've been hearing that story for a long time with all respect,
16 Mr. Robinson.

17 A But it's the truth. It's the truth.

18 Q We've been hearing it for a long time.

19 A We've got investors that you could actually talk to --

20 MR. GEWERTER: Counsel is arguing with the witness.

21 MR. LIEBRADER: Okay, nonresponsive. I'm just going to
22 object. Can we go back --

23 THE COURT: Sustained.

24 MR. LIEBRADER: -- to page 194.

25 THE COURT: Go ahead and answer -- ask the next question.

1 THE WITNESS: I'm sorry, I didn't mean to --
2 THE COURT: That's okay.
3 THE WITNESS: -- proselytize, but --
4 THE COURT: We're going to move on though.
5 BY MR. LIEBRADER:
6 Q Page 194, sir.
7 A Okay.
8 Q The paragraph that -- on the top of page for the year ended
9 December 31st of 2014.
10 A Yes.
11 Q Gross profit was \$242,000. Do you see that?
12 A I see.
13 Q And the interest expense was \$405,491. So that means how
14 much money that you paid out in financing charges or -- paying interest
15 to the investors, correct?
16 A Yes.
17 Q And so if you only made a gross profit of \$242,000 where
18 were you getting the money to pay the interest to the investors from?
19 Wasn't it coming from the additional fund raise from Ms. Minuskin?
20 A No, when I was rich I had to put a lot of money in the
21 company.
22 Q You put money into the company to pay for it --
23 A They still owe me money.
24 Q -- to pay the investors. Okay. We'll take a look at that in a
25 second.

1 A Yeah.

2 Q This document, same document, page 205. This time note 7,
3 notes payable. The company has entered into a series of notes payable
4 with several unrelated parties. All notes containing identical terms from
5 the date of consummation. The notes are unsecured bearing an interest
6 of 9% and due within 18 months from the execution date with an option
7 to extend for 6 months. Again, our same promissory notes, the notes
8 also carry a late fee of 5% after a 5-day grace period and are
9 conditionally guaranteed by an officer of the company.

10 So again, in another document, another offering memorandum
11 you're telling prospective investors that these notes are guaranteed by
12 you. Isn't that correct?

13 A Well the previous Judge --

14 Q Sir, yes or no, isn't that's what it says, that they were
15 guaranteed by you?

16 A That's what it says, the previous Judge found me and you got
17 a judgment against me.

18 Q He found you liable as a guarantor, --

19 A Yeah.

20 Q -- Judge Williams?

21 A He did.

22 Q Okay. But that wasn't even the question. The question is, is
23 aren't your representing to potential investors that you're guaranteeing --
24 you guaranteed these promissory notes by way of this document? It's
25 not Mr. Rodriguez who's guaranteed them, right?

1 A Well as I mentioned, I've already found guilty of that anyway.

2 Q So you --

3 A But it wasn't my intention in the beginning.

4 Q Then let's how about --

5 A But I can testify all day long that it wasn't my intention. But it
6 was the ultimate result of that trial.

7 Q But differently -- it's a different question. You're telling
8 prospective investors that --

9 A I know it's a different question, but I'm not going to answer it
10 because I don't know.

11 THE COURT: Counsel and Mr. Robinson, please I know it's
12 difficult. Let each other finish before we jump in.

13 BY MR. LIEBRADER:

14 Q Who was the officer that guaranteed --

15 A I'm sorry, Your Honor.

16 Q -- that note 7 of Exhibit 13, page 205, who is the officer being
17 referred to there, is it you?

18 A Me.

19 Q It's you, okay. Thank you. Tab 14, Mr. Robinson.

20 A Yes, I have it.

21 Q Page 228. I'm sorry, let's just I guess introduce this. Tab 14,
22 this is a preliminary offering circular. It looks like August 17th of 2015.
23 So this was about 6 months before the private placement memorandum
24 in tab 13, right?

25 A Yes.

1 Q This was another sort of separate offering that you wanted to
2 do, is that right?

3 A Yes.

4 Q And if we turn to tab 228 please. I'm sorry, page 228. Again
5 representing to investors that you are the company CEO and chairman
6 of the Board. You've held this position since 2012 and you're in charge
7 of all policy and operations of the company, true statement?

8 A Yes.

9 Q And Mr. Rodriguez is the company's Chief Financial Officer
10 background in sales, marketing and accounting, strategies in systems
11 for financial services firms. He has held this position since 2012 and is
12 in charge of financial policy and financial records of the company, true
13 statement?

14 A Yes.

15 Q Page 250 please and again it's notes payable again talking
16 about conditionally guaranteed by an officer of the company. Again
17 referring to you, is that right?

18 A Yes.

19 THE COURT: I'm sorry. Where are you looking at that,
20 counsel?

21 MR. LIEBRADER: Tab 14, --

22 THE COURT: Uh-huh.

23 MR. LIEBRADER: -- page 250, note 8.

24 THE COURT: Note 8.

25 MR. LIEBRADER: It looks like the same language it was just

1 used again --

2 THE COURT: Oh I see, yes.

3 MR. LIEBRADER: -- in another offering document, right?

4 THE COURT: Thank you.

5 BY MR. LIEBRADER:

6 A Yes.

7 Q Okay. Bear with me, Mr. Robinson, I'm -- page 237 same
8 exhibit, page 237. And you had signed off on this document, because
9 you believed it to be true and consistent with the requirements of the
10 securities laws, right?

11 A I had to go back one, 237 didn't I?

12 THE COURT: Yes, 237.

13 THE WITNESS: 237.

14 THE COURT: Yeah.

15 BY MR. LIEBRADER:

16 A Yes, sir, I'm there.

17 Q And that's just you signing off electronically on the accuracy of
18 the information in this document, right?

19 A Yes.

20 Q As well as Mr. Rodriguez, right?

21 A Right.

22 Q And the Yoder brothers?

23 A Mike and Frank Yoder, yeah.

24 Q And Mr. Rodriguez signed off as the Chief Financial Officer
25 and Chief Accounting Officer, is that correct?

1 A Yes.

2 Q Mr. Robinson, thank you for your time.

3 THE COURT: All right. We've been going for about an hour,
4 almost an hour and a half. So we're going to take our first afternoon
5 break. We'll take a 15 minute recess.

6 THE WITNESS: Let me apologize to you for editorializing. I
7 didn't mean to --

8 MR. LIEBRADER: For -- I'm sorry?

9 THE WITNESS: -- pontificate.

10 MR. LIEBRADER: Oh, I'm used to it, sir.

11 THE COURT: All right. So we'll be in recess until 3:25. All
12 right, we'll see everyone back then.

13 [Recess taken at 3:06 p.m.]

14 [Trial resumed at 3:21 p.m.]

15 THE COURT: We can go back on the record in A-17-
16 7622645-C. When you're ready for examination, counsel, you may
17 begin.

18 MR. GEWERTER: Yeah, we're ready to start, Your Honor.

19 THE COURT: Yes, go ahead.

20 **CROSS-EXAMINATION**

21 BY MR. GEWERTER:

22 Q Mr. Robinson, how are you doing today?

23 A I'm fine, sir. Yourself?

24 Q And you're how old now?

25 A Pardon me?

1 Q How old are you now?
2 A 89.
3 Q I missed the last birthdate.
4 A Born in 31.
5 Q And I've known you since 1970, right?
6 A We've known each other for almost 50 years, has it been?
7 Q It seems like forever, yes. Okay.
8 A 42 years I guess.
9 Q I think so. All right, let me have you look at a couple of
10 exhibits here. Look at the book in Exhibit Number 15, tab 15. Do you
11 see that?
12 A I'm still getting there. The book's coming apart.
13 Q Do you need your glasses, Ron?
14 A Oh, yeah, thank you.
15 MR. GEWERTER: May I approach, Your Honor?
16 THE COURT: Yes, you may.
17 THE WITNESS: I appreciate it.
18 MR. GEWERTER: You get old you forget these things.
19 THE WITNESS: Yeah. I got to fix this book first, it's kind of
20 coming apart.
21 MR. GEWERTER: All right. You're good?
22 THE WITNESS: I'm not able to do it.
23 THE MARSHAL: Let me see it.
24 THE WITNESS: My fingers just don't work good. Thanks.
25 Great, it was hanging up there. Thanks.

1 BY MR. GEWERTER:

2 Q Do you have tab number 15 in front of you, Ron?

3 A Yes.

4 Q Okay. The first two pages of that tab which are page numbers
5 317 and 318, do you see those?

6 A I do.

7 Q The upper right-hand corner.

8 A I do.

9 Q Okay. What is that?

10 A That's the judgment that was entered in District Court.

11 Q In fact, sir, isn't that only money judgment entered in the law of
12 the case against any party in that case?

13 A Yes.

14 Q And that was entered against you only, correct?

15 A Personally, yes.

16 Q And that was on the issue of the guarantee, correct?

17 A Yes.

18 Q Everyone else was dismissed from the case, is that correct?

19 A Yes.

20 Q You were asked about some Excel sheets earlier. Do you
21 remember that question?

22 A I'm sorry, I didn't --

23 Q The Excel sheet.

24 A Yeah, the Excel sheet, yeah.

25 Q That would be tab number 8, you see that?

1 A Yes, I do.

2 Q Did you prepare that Excel sheet?

3 A No.

4 Q Do you even know how to prepare an Excel sheet?

5 A I'm sorry, no.

6 Q And that appears to be a list of investors, is that correct?

7 A Yes.

8 Q And do you know if Julie Minuskin prepared that Excel sheet?

9 A I believe so.

10 Q But it definitely wasn't you was it?

11 A It wasn't me.

12 Q Okay. Now there's talk about a PowerPoint presentation. Did

13 Frank Yoder -- was Frank Yoder in charge of that PowerPoint

14 presentation?

15 A Exclusively.

16 Q So he has the final say so what went in, what went out,

17 correct?

18 A Yes.

19 Q What about Vernon Rodriguez's position with the company.

20 Let's talk about VCC first. What was his daily function of VC -- Virtual

21 Communications Corporation?

22 A You'd have to ask Vern that. I'm a little bit vague on it myself.

23 Q Okay.

24 A I'm sorry.

25 Q But Vern -- is it fair to say Vern is generally a marketing type

1 person?

2 A Oh he is definitely. He's one of the best I've ever known.

3 Q Do you know if Vern ever sold these promissory notes to

4 investors?

5 A He never had anything to do with it?

6 Q Did you ever have anything to do with it?

7 A No.

8 Q Did your granddaughter have anything to do with?

9 A No, nobody in the organization did.

10 Q Okay. When you say organization you mean Wintech --

11 A VCC.

12 Q -- and VCC, correct?

13 A Yeah, right.

14 Q Let's look at tab number 12, please, page 163.

15 A Okay.

16 Q You see footnote number 8 that you were asked about?

17 A Yes.

18 Q You remember counsel for the plaintiffs asked you a question

19 if these were conditional guaranteed -- I'm sorry, if you conditionally

20 guaranteed these notes?

21 A Yes.

22 Q So you did not unconditionally guarantee these notes, you

23 actually conditionally guaranteed these notes?

24 A Yes, it was conditioned, yes.

25 Q Right, so there were conditions to guarantee, is that correct?

1 A Correct.

2 Q And the accountants picked up on that didn't they?

3 A They did .

4 Q And if you go to the same question, if you go to Exhibit

5 number 13, page 205. Let me know when you find it. Tab 13, exhibit --

6 page 205.

7 A 205, I'm getting there. All right.

8 Q Go to footnote number 7, which says notes payable.

9 A Yes.

10 Q First paragraph, again that says conditionally guaranteed,

11 correct?

12 A Correct.

13 Q And that's a true statement isn't it?

14 A It is a true statement, yeah.

15 Q And this was prepared by accountants?

16 A Yes, it was, excuse me.

17 Q Tab number 14 please.

18 A 214?

19 Q No, tab 14. I'm sorry.

20 A Oh, tab 14. All right.

21 Q Then go to page number 250. Do you see that?

22 A 250?

23 Q Yes, upper right-hand corner.

24 A Hold on, 250.

25 Q You're in tab 14, page 250?

1 A Just almost there.

2 Q Oh, it's okay. Take your time.

3 A All right.

4 Q Go to note number 8, notes payable. End of the first

5 paragraph says conditionally again doesn't it?

6 A It does.

7 Q And in fact this is an audited financial statement, which is

8 different than the others, correct?

9 A This was the certified audit, yes.

10 Q Tell me the difference between a certified audit versus the

11 other financial statements?

12 A A certified audit is a very involved audit. It goes through all

13 the details. As a matter of fact there was an allegation that I

14 misappropriated funds. And of course the auditing company went

15 through everything, found nothing. And I think that was --

16 Q Now this is -- you said audit. The -- is this one of the

17 independent CPAs, they're not employees, go through books, records,

18 checks, contracts, everything?

19 A Everything complete. Because this would be utilized for an

20 SCC offering, which they require a certified audit --

21 Q And your --

22 A -- by and independent party and we paid, like I don't

23 remember, a ton of money for it.

24 Q And your independent accountants said that the notes are

25 conditionally guaranteed, correct?

1 A Yes.

2 Q Nowhere does it say it say unconditional guarantee does it?

3 A No.

4 Q So there were conditions out there, weren't there with you
5 paying -- with you as the guarantor?

6 A Yes.

7 Q Okay. And going through this, I don't want you to go page by
8 page but when I went through these exhibits, especially Exhibit Number
9 14 there's nothing in any of these notes that says anything that was
10 done improperly by you. Do you come to that same conclusion?

11 A Yes.

12 Q In fact all the financial statements find nothing wrong with your
13 interaction with the corporation does it?

14 A None whatsoever, when a certified audit goes through it's -- if
15 there's anything there they'll find it.

16 Q The only person that's accused of you of impropriety is Frank
17 Yoder, isn't it?

18 A Frank, yeah.

19 Q Now Vernon Rodriguez never guaranteed any promissory
20 notes, correct?

21 A No.

22 Q Just you, correct?

23 A Yes.

24 Q Okay. Was Vernon Rodriguez in charge of the final drafts of
25 the PowerPoint presentation that went to investors?

1 A I don't think he had anything to do with it all. It was Frank's
2 job totally.

3 Q And was Vernon primarily involved initially with Wintech more
4 than with VCC?

5 A Yes.

6 Q And tell me the difference between -- I know one's a wholly
7 owned subsidiary --

8 A When I formed --

9 Q Let me finish the question. Tell me the difference between the
10 two companies and how they --

11 A Well one was capital stock corporation filed with the state of
12 Nevada and the other was an LLC. And it was the operating company
13 that was wholly owned by the stock company VCC.

14 Q Okay.

15 A Virtual Communications Corporation acted as a holding entity.

16 Q And was the purpose of VCC? I know you don't need to state
17 a purpose in Nevada, but was there an operating purpose for VCC?

18 A Yeah, the operating purpose was ultimately to take the
19 company public and all the documentation in there to provide for the
20 preferred shares of stock and the common shares of stock and the par
21 value and all the rest that is needed for a brokerage firm to go into the
22 public market and do a offering. That was the reason for the certified
23 audit.

24 Q And the subsidiary, which is Wintech, was basically the
25 technology part of the company?

1 A Yeah it was the mechanics of the company.

2 Q Okay.

3 A It --

4 THE COURT: I'm sorry. I have a question about that. VCC
5 acted like a holding entity for who -- for what company, for Wintech?

6 THE WITNESS: Yes.

7 THE COURT: Thank you.

8 BY MR. GEWERTER:

9 A Wintech was the holder of the patents, to copy rights and the
10 technology. And as you know technology, as he can say, is made up of
11 a bunch of codes. And these codes are embedded in the LLC, the -- on
12 behalf of VCC.

13 Q Was Wintech 100% owned by VCC?

14 A No, VCC is 100% owned by Wintech. In other words, the LLC
15 is wholly owned by VCC.

16 Q Right. I think you misstated that.

17 A Oh, I did

18 Q The parent -- what's the parent company, what's the
19 subsidiary?

20 A Yeah.

21 Q Tell me who is who.

22 A VCC is the parent.

23 Q Right.

24 A The LLC is the operating entity.

25 Q Which is the subsidiary, correct?

1 A Right.

2 Q That's -- okay.

3 A Yeah.

4 Q That's what I thought you meant to say. All right. And there
5 was an email you were asked about if there's an issue, if an investor
6 wants to talk to somebody, you said you'd refer them to Vern. Was that
7 for marketing or what was that referral for to Vern?

8 A Well he much more articulate than myself and it was a selling
9 job, you know, obviously.

10 Q What would he talk -- did he ever -- he never did sales of the
11 investors did he?

12 A No, he just explained.

13 Q Is it true that he markets with third party customers by Minolta
14 Konica and those companies?

15 A Yes.

16 Q Tell me how that works. What is the relationship between
17 Wintech, VCC and Minolta Konica?

18 A Well I'm no longer a part of the company. But I can say that
19 when I was part of the company the LLC had a joint venture agreement
20 with Konica Minolta which exists today. And they do the sales arm and
21 they actually market throughout the world now. I think the company is
22 eight different countries. The technology called ALICE, which is a
23 technology that provides companies with a receptionist. It's actually
24 called ALICE Receptionist.

25 Q And that's basically what Vernon was involved with --

1 A Yes.

2 Q -- on a daily basis?

3 A Yes, almost exclusively.

4 Q Okay. So he would deal with companies like Minolta Konica.

5 A He did.

6 Q And he really didn't deal with money raise or all that nonsense
7 the Julie and her group, Retire Happy.

8 A I never dealt with Minolta and I never dealt with money raise
9 and it was kind of Vern.

10 Q Okay. You were asked earlier by Mr. Liebrader about your
11 position. Why do you think your guarantee went away and I objected. I
12 said it's a legal conclusion. But is that your position how the bankruptcy
13 plan was approved? And the terms were changed from debt equity to
14 guarantee [indiscernible] --

15 A I think the law is pretty specific on it. I read it and reread it and
16 read it and reread it. And it states that the primary guarantor on an --
17 financial obligation is removed from that obligation when --

18 MR. LIEBRADER: I'm going to object. He's clearly misstating
19 the law. I mean, it's in our brief that --

20 MR. GEWERTER: I asked him earlier. He said he was
21 misstating the law and --

22 MR. LIEBRADER: Well the witness is --

23 MR. GEWERTER: He's testifying.

24 MR. LIEBRADER: -- completely -- he's saying it's clear. It's
25 not clear. It's -- you're completely misstating the law. I object.

1 MR. GEWERTER: Whether --

2 THE COURT: All right.

3 MR. GEWERTER: First of all, he's not misstating the law.

4 THE COURT: Counsel, we're going to direct comments to the
5 Court. If the witness can testify to what he believes it is. I have read the
6 case law and additional case law and may ask for additional briefing on
7 that issue. So he can testify to what he believes it is. That's certainly
8 different to what the law actually is or perhaps he's right. I don't know at
9 this point.

10 BY MR. GEWERTER:

11 Q You've read -- you understand a pretrial memorandum was
12 submitted on your behalf, in part -- in this case?

13 A Yes.

14 Q And that issue was discussed in a pretrial memorandum?

15 A It was.

16 Q And is that your understanding of why you do not believe your
17 guarantee --

18 A If I understand the English language properly, the guarantee
19 went away when the Chapter 11 was filed because it altered the primary
20 obligation.

21 Q Earlier I asked Mr. Hotchkiss a question about he went in the
22 Bankruptcy Court basically he went from debt to equity. So instead of
23 promissory notes he now owns stock.

24 A Yes.

25 Q Do you remember that line of questioning?

1 A Say again.

2 Q He went from a noteholder to a stockholder?

3 A Yes.

4 Q Okay. You remember that line of questioning earlier today,
5 that I asked Mr. Hotchkiss about? Do you remember those questions?

6 A Yes.

7 Q Okay. So do you feel that it's a fair equivalent value that he's
8 no longer a noteholder and is now a stockholder?

9 MR. LIEBRADER: Objection, argumentative.

10 MR. GEWERTER: It's a question.

11 MR. LIEBRADER: Do you feel it's fair equivalent is pretty
12 argumentative to me.

13 MR. GEWERTER: No it's not. It's a question.

14 THE COURT: No, that's overruled. He can answer the
15 question.

16 BY MR. GEWERTER:

17 Q Go ahead please.

18 A Well it was thoroughly discussed with the noteholders in the
19 reorganization plan and they had a clear picture. As a matter of fact, we
20 had a representative, independent representative that discussed it with
21 those that were invited to call in and get the details of it. And they --
22 80% of them voted for it because they could see the potential.

23 Q Let me ask you this question for clarity. The noteholders are
24 now stockholders, what kind of stock did they get? How did that
25 conversion work?

1 A Well their principle obligation under the note was satisfied with
2 the preferred stock. And the accrued interest up and to the point in
3 which the Court ruled on the reorganization was in common stock. So
4 they got --

5 Q So they got two classes --

6 A -- both preferred and common. Excuse me.

7 Q So the noteholders are no longer debt holders. Now they're
8 equity holders with two classes of stock, is that correct?

9 A Right, preferred and common.

10 Q And you're still a stockholder in the company?

11 A I am.

12 Q And do you have an opinion as to the viability of this
13 company?

14 A The viability?

15 Q Yes.

16 A Oh, it's tremendous because the technology has been
17 improved, proved and proved to such an extent. I mean, when you have
18 a company that's a billion dollar Japanese company like Konica and
19 Minolta that comes in as your venture partner, you know you've got
20 something that's real. We'd be publically traded now if it wasn't for all of
21 this damn litigation.

22 MR. GEWERTER: I have no further questions. Thank you.

23 THE COURT: Redirect.

24 MR. LIEBRADER: Just a couple, Your Honor.

25 THE COURT: Sure.

1 **REDIRECT EXAMINATION**

2 BY MR. LIEBRADER:

3 Q Mr. Robinson, the conditional guarantee was, is that you were
4 going to be on the hook if VCC didn't pay the money. That was the
5 condition, right?

6 A Well the condition was that my guarantee would go away
7 when they got paid.

8 Q When -- so when the investors got paid?

9 A Right.

10 Q Okay. So that was --

11 A When they got paid with the shares and stock, my guarantee
12 went away.

13 Q So if they got paid with -- and what value were they supposed
14 to get, the amount of money that they paid back?

15 A Well they got --

16 Q What were they supposed to get?

17 A For every dollar of accrued interest they got one share of
18 stock.

19 Q Is that what it said in the --

20 A Common.

21 Q -- promissory notes?

22 A Pardon me?

23 Q It said in the promissory notes that they were going to get their
24 principle back in interest, right?

25 A No, reorganization was subsequent to the time the notes were

1 executed.

2 Q I understand. I understand. We can argue about that and
3 maybe Mr. Gewerter will do in closing. The condition on the note, the
4 conditional guarantee, maybe it should have said unconditional
5 guarantee, maybe it said condition. What was the condition back in
6 2014?

7 A Well it was our opinion with the fact that the company was so
8 viable that we would go public and raise enough funds that we could go
9 back to the noteholders and give them tradeable stock. As it turned out,
10 we ran out of time and we -- that's when reorganized and gave them
11 preferred and common --

12 Q But your --

13 A -- in anticipation of them reaping a benefit of it. They got it at
14 a dollar. Let's assume that we file an S-1 offering --

15 Q Sir, --

16 A - and it comes out at \$6 or \$7.

17 MR. LIEBRADER: I have to object, nonresponsive.

18 THE COURT: I'm going to sustain that objection.

19 BY MR. LIEBRADER:

20 Q Mr. Robinson, we're going back to 2014 and the
21 representation that you were making to your future investors, where it
22 says that it was conditionally guaranteed. And my question is, what was
23 the condition, back in 2014?

24 MR. GEWERTER: He already answered.

25 THE WITNESS: Going public.

1 MR. LIEBRADER: He hasn't answered it.

2 MR. GEWERTER: He answered it.

3 MR. LIEBRADER: He hasn't answer it.

4 THE COURT: He just answered going public.

5 MR. LIEBRADER: I'm sorry, Your Honor?

6 THE COURT: He just answered going public.

7 MR. LIEBRADER: Going public.

8 THE COURT: That was the answer.

9 BY MR. LIEBRADER:

10 Q The conditional guarantee, so back in 2014, the conditional
11 guarantee was the investors -- well what was your guarantee, what was
12 your guaranteed conditioned on?

13 A [No audible response].

14 Q The way I read it, sir, was that you were only on the hook if
15 VCC couldn't pay it back and then you're - then you were obligated to
16 pay it and that was the condition. Isn't that --

17 A I think you're correct in that assumption.

18 Q Okay. Thank you. Mr. Gewerter mentioned the judgment Ms.
19 Waldo got against you. But didn't we -- we dismissed out Ms. Minuskin
20 from that lawsuit. We dismissed out Ms. Davis. We dismissed out Mr.
21 Yoder. And Mr. Rodriguez wasn't even named in that lawsuit, correct.
22 All of that is true isn't it?

23 A Yes.

24 Q So when Mr. Gewerter says that you were the only person that
25 we got-- and of course we couldn't get a judgment against VCC because

1 they had filed for bankruptcy and we couldn't proceed against them
2 anymore, right?

3 A Correct.

4 Q Mr. Gewerter asked you if the only person that accused you of
5 wrongdoing was Frank. You're familiar with the bankruptcy filings that
6 VCC made in this case, is that right?

7 A Yes.

8 Q And I want to read to you something from page 52 of 75 from
9 their plan, their initial summary of reorganization. The debtor VCC
10 believes it holds viable claims against former officer and director Ronald
11 J. Robinson and possibly other parties arising from the misuse of
12 proceeds from the unsecured notes and related matters. Do you know
13 why -- why did they put that in this bankruptcy filing?

14 A I think you put it in and convinced the Bankruptcy Court to put
15 it in.

16 Q Sir, is VCC's, Mr. Bart Larsen from Kolesar and Leatham --

17 A I understand, but --

18 Q -- filed that with the Bankruptcy Court.

19 A It's my understanding that you complained and argued that
20 that that be put in there.

21 Q Do you have --

22 A Because you had gotten that information from Frank Yoder.

23 Q Do you have any basis at all for -- that supports that?

24 Because I think that is just an outrageous statement. What proof do you
25 have that I put this in this document that was filed VCC's lawyer?

1 A You convinced the attorneys in the bankruptcy action to put it
2 in.

3 Q And so you think Mr. Larsen was going on just an assumption
4 or a statement that I made in making a representation the bank ---
5 Federal Bankruptcy Court. He didn't investigate it, is that what you're
6 saying?

7 A What I'm saying in effect is that you and Mr. Larsen were
8 friends and somewhere along the line I think it got in there. But it was an
9 erroneous comment to be put in there.

10 Q And it goes on, Robinson disputes such claims and denies
11 that he is liable to the debtor for any misuse of proceeds from the
12 unsecured notes. Did I persuade him to put that in there?

13 A It's an allegation, unsupported.

14 Q To date the debtor has chosen -- not debtor -- VCC has
15 chosen not to pursue any claim against Robinson, one, do the high cost
16 and uncertainty of litigation and two, because Robinson has agreed to
17 allow Wintech to occupy a new space in a commercial building which he
18 holds an indirect ownership interest on a rent free basis. The debtor
19 believes the market value of the free rent provided to Wintech by
20 Robinson to be approximately \$10,000 a month. Although informal, the
21 debtors management believes that the current arrangement with
22 Robinson is preferable to litigation and would prefer that this
23 arrangement continue for the foreseeable future should the plan be
24 confirmed.

25 So in effect you gave Wintech and VCC free rent in your

1 building. Is that correct?

2 A Correct.

3 Q And in exchange for them not suing you, right?

4 A No.

5 Q That's not what this says?

6 A No.

7 Q That wasn't part of the discussion that you had with them?

8 A No, they're weren't going to sue me. They didn't have any
9 grounds to sue me on.

10 Q Okay.

11 A We had an audit that cleared everything out of it completely, a
12 certified audit. It's been -- that's been testified to on more than one
13 occasion.

14 MR. LIEBRADER: Your Honor, I don't have anything else with
15 -- for Mr. Robinson. Thank you.

16 THE COURT: All right, any re --

17 MR. GEWERTER: A couple I do.

18 THE COURT: Sure.

19 **RE-CROSS EXAMINATION**

20 BY MR. GEWERTER:

21 Q Mr. Robinson, is it a fair statement that your guarantee was
22 conditioned on the debt to the noteholders being extinguished?

23 A Yes.

24 Q And Mr. Liebrader talks about people being dismissed, well
25 they could have gone after Frank -- they sued Frank Yoder, didn't they,

1 in the other case, in the *Waldo* case?

2 A Yeah, he cooperated with David on the deal and got
3 eliminated.

4 Q And no one from Bankruptcy Court ever came after you did
5 they?

6 A Say --

7 Q Nobody from the Bankruptcy Court --

8 A Never had any --

9 Q -- ever came after you in a lawsuit?

10 A No, never had -- I totally resigned from the company, had
11 nothing to do with it after that.

12 Q No attorney for VCC came after you, is that correct?

13 A No.

14 Q Did the bankruptcy trustee come after you?

15 A No, nobody did.

16 MR. GEWERTER: All right, thank you. No further questions,
17 thank you.

18 THE COURT: All right. You can go ahead and step down.

19 THE WITNESS: I think he has a question.

20 THE COURT: Do you have a follow-up question, counsel?

21 MR. LIEBRADER: No, Your Honor, I was just going to ask to
22 move certain exhibits into evidence.

23 THE COURT: All right. Let's so -- I'm going to have him step
24 down then. Is that all right with both counsel?

25 MR. LIEBRADER: Sure, yes.

1 MR. GEWERTER: Yeah.

2 THE COURT: All right. Thank you very much. And what are
3 we seeking to move in?

4 MR. LIEBRADER: Exhibit 2.

5 MR. GEWERTER: Hold on one second. That's fine.

6 MR. LIEBRADER: 4.

7 MR. GEWERTER: Hold on.

8 MR. LIEBRADER: These are all the ones I covered with --

9 MR. GEWERTER: No, I understand. I just want to make sure
10 -- I have to --

11 MR. LIEBRADER: Sure, 2, 4, 5.

12 MR. GEWERTER: All right. That's fine.

13 MR. LIEBRADER: 7, 8 --

14 MR. GEWERTER: Hold on a second. Dave, one second, 7
15 that's fine.

16 MR. LIEBRADER: 8.

17 MR. GEWERTER: No, I have a problem with 8. My problem
18 with 8 is that we don't know who prepared this document. There's been
19 -- there's no foundation and we -- you know, there's been different
20 testimony as to who prepared it.

21 MR. LIEBRADER: Well, Mr. Yoder produced it. We produced
22 it to the defendants. Mr. Robinson test -- I believe he testified the
23 information on it was accurate.

24 MR. GEWERTER: No, what he testified to -- he did. He also
25 thought that it was prepared by Julie Minuskin. So we don't know who

1 prepared this. Now if Mr. Yoder wants to come up here tomorrow and
2 say he prepared it -- production doesn't mean it's admissible. So if he
3 wants to say he produced it tomorrow that's -- or he prepared it, that's
4 fine.

5 MR. LIEBRADER: Okay, well --

6 THE COURT: All right, so we're going to skip over 8 --

7 MR. GEWERTER: Just for now.

8 THE COURT: For now, all right.

9 MR. GEWERTER: I want a foundation on it.

10 THE COURT: 11.

11 MR. GEWERTER: One second. That's fine.

12 MR. LIEBRADER: 12.

13 MR. GEWERTER: You're going to skip over 9 and -- that's
14 fine.

15 MR. LIEBRADER: I just haven't covered them yet.

16 MR. GEWERTER: That's fine. I actually you did cover 10, but
17 we can go -- we can wait --

18 MR. LIEBRADER: I'm sorry, 12.

19 MR. GEWERTER: 12 is fine.

20 MR. LIEBRADER: 13.

21 MR. GEWERTER: That's fine.

22 MR. LIEBRADER: 14, and you've covered 15, so we can --

23 MR. GEWERTER: I covered 15, the first two pages only.

24 MR. LIEBRADER: First two pages and that's fine.

25 MR. GEWERTER: First two pages of 15 --

1 THE COURT: So are we only seeking to move the first two
2 pages in?
3 MR. GEWERTER: Of 15 only.
4 MR. LIEBRADER: Yes, Your Honor.
5 THE COURT: So that will become 15 --
6 THE CLERK: Are you going to redact the -- take the other
7 pages out and --
8 THE COURT: I guess it depends -- we'll make this --
9 MR. GEWERTER: On 15 it's just pages --
10 MR. LIEBRADER: Can I pull them out before --
11 THE COURT: 15.
12 MR. LIEBRADER: -- we submit them?
13 MR. GEWERTER: It's page 317 and 318.
14 THE COURT: Assuming the rest don't come in, yes. So it will
15 be -- for now it will be pages 1 and 2 will be admitted.
16 **[EXHIBIT 15, PAGES 317 AND 318 -- ADMITTED]**
17 MR. GEWERTER: Yeah, the numbers actually are 317 and
18 318.
19 THE COURT: 317 and 318, understood. All right and we'll
20 pull those out before I take it back. Or I'll take it out of my binder
21 depending on --
22 MR. GEWERTER: Thank you.
23 THE COURT: -- if anything else comes back in. All right, so
24 those will be admitted by stipulation.
25 **[EXHIBITS 2, 4, 5, 7, 11, 12, 13, 14 -- ADMITTED]**

1 THE COURT: All right, who is our next witness?

2 MR. LIEBRADER: Ms. Davis.

3 MR. GEWERTER: You okay.

4 MS. DAVIS: Yeah.

5 **ALISA DAVIS**

6 [having been called as a witness and being first duly sworn, testified as
7 follows:]

8 THE CLERK: Please be seated and then state and spell your
9 name for the record.

10 THE WITNESS: Alisa Davis, A-L-I-S-A, D-A-V-I-S.

11 MR. GEWERTER: And before we go forward, I just want the
12 record clear that she's testifying on the stipulation that you made earlier
13 today in court that if she testifies consistent with the testimony of the
14 other case, she is going to be dismissed at the conclusion of her
15 testimony.

16 MR. LIEBRADER: That is correct, Your Honor.

17 THE COURT: All right.

18 **DIRECT EXAMINATION**

19 BY MR. LIEBRADER:

20 Q Ms. Davis, good afternoon.

21 A Good afternoon.

22 Q Turn to tab 10 please.

23 A Sure. Okay.

24 Q And this is an affidavit being prepared in the *Waldo* case,
25 right?

1 A Correct.

2 Q Or someone prepared it for you and you signed off on it?

3 A I'm sorry. I'm having the same problem he had. All right.
4 Correct.

5 Q Okay. And your -- and that's your signature, notarized
6 signature on page 2, right?

7 A It is.

8 Q And you were surprised to get named in the *Waldo* case as a
9 defendant right?

10 A Generally, yes.

11 Q It kind of came from out of nowhere?

12 A Yes.

13 Q And you were surprised that your grandfather said that you
14 had used his -- given the promissory note, the signed and notarized
15 promissory note to Ms. Minuskin without his permission and
16 authorization. That surprised you to learn that, right?

17 A Correct.

18 Q Because you testified in *Waldo* when you took the stand that
19 in fact your grandfather -- you did send a signed and authorized note to
20 him.

21 MR. GEWERTER: You said notarized. I object. I don't think
22 they're notarized.

23 BY MR. LIEBRADER:

24 Q Excuse me. The top is initialed. I apologize. I meant to say
25 initialed. You sent him the signed and initialed promissory note or the --

1 we'll come to it, but you sent him -- he needed to put an initial on it to
2 make it complete. He did that, sent it back to you and then you had a
3 signed and initial promissory note which you then sent to Ms. Minuskin?

4 A That was a very big question. Yes.

5 THE COURT: That was. So I'm actually -- two things --

6 THE WITNESS: Okay. Could I get something out of that?

7 THE COURT: Yeah, hold on.

8 MR. LIEBRADER: I'll break it down.

9 THE COURT: Yeah, but one second. So I'm going to sustain
10 the objection regarding the initial or notarized, so that's sustained. But
11 let's go ahead and have you rephrase the question.

12 BY MR. LIEBRADER:

13 Q Okay. So you were surprised -- let's cover Exhibit 10 first.
14 Because --

15 A Okay.

16 Q -- then we'll just kind of build up to that.

17 A I just want to find out what in this affidavit that you signed off
18 on as accurate. I believe most of it should be accurate, right?
19 Paragraph three, you worked as an administrative assistant for Virtual
20 Communication Corporation, is that right?

21 A Correct.

22 Q And who did you work for? You reported directly to Ron, is
23 that right?

24 A Yeah, I worked for anyone that asked me to do anything at the
25 company.

1 Q And your office was right next to Ron's?
2 A At one point, yeah.
3 Q At one point, where -- did it move --
4 A It floated.
5 Q -- somewhere else?
6 A No, we were in the same suite. I just floated from offices.
7 Q You say on one occasion I provided Julie Minuskin with a
8 facsimile of a -- VCC promissory note personally guaranteed by Ronald
9 Robinson, true?
10 Q Which -- yes.
11 Q Paragraph 5.
12 A Yes.
13 Q What were some of your job duties, I mean, when you worked
14 for -- and did you work for VCC or Wintech or both?
15 A I worked for whoever asked me to do something. I pretty
16 much did anything I was asked to by Ron or Frank or Vern or --
17 Q Uh-huh.
18 A -- Mike or anyone else that walked in.
19 Q And you dealt with Ms. Minuskin concerning the promissory
20 note, right?
21 A Yeah, I guess I was a paper pusher as far as it goes to emails.
22 Yeah. She talked to me, because she and I were pregnant at the same
23 time too, so there was a lot --
24 Q Okay.
25 A -- of everything back and forth with her.

1 Q Paragraph 9, as an administrative assistant I only performed
2 menial and clerical duties. Is that right?

3 A As sad as that sounds, yes.

4 Q Okay. Well I didn't prepare it. I think Mr. Gewerter did.
5 Paragraph 11, as an administrative assistant I followed simple clerical
6 orders and never made any management decisions.

7 A That's correct.

8 Q True? And you weren't authorized to make any kind of
9 management decisions, right?

10 A No.

11 Q And you weren't authorized to give permission for Ms.
12 Minuskin to use the promissory note, right?

13 A No, there was no permissions.

14 Q And you had to get permission from Ron for something like
15 that, right?

16 A For anything, yeah.

17 Q For anything. So this -- and what years did you work for VCC
18 and Wintech when you -- were you there from the beginning of the fund
19 raise in January of 2013 until the end?

20 A Yeah -- yes, I was pregnant -- I don't know -- do you know
21 when that chunk was? You said the beginning of 13 and then --

22 Q January 2013 it started and I think it went through, I think,
23 September 14.

24 A So then I had two pregnancies in between there. But yes, I
25 was always working for them.

1 Q Okay and so you were out maybe -
2 A So I was --
3 Q -- for maternity leave.
4 A -- in and out. Yeah, my -- I wasn't allowed to drive because
5 my stomach hit the steering wheel.
6 Q Okay. So between January 2013 to December 2014, --
7 A Yeah.
8 Q -- you were there pretty much the whole time other than when
9 you were out on maternity leave?
10 A Yes.
11 Q Okay. So let's turn to tab 6. This is an email from Alisa --
12 A Alisa.
13 Q I'm sorry, Alisa, I keep forgetting. Alisa to Frank Yoder. Page
14 91 of tab 6.
15 A Okay.
16 Q And this is September of 2013, so this about 9 months after
17 the fund raise started.
18 A Okay.
19 Q And you're sending an email to Mr. Yoder and Mr. Rodriguez.
20 And what's the purpose -- take a look at this email and tell me what -- tell
21 the Court what was the reason.
22 A It was -- do you want me to read it?
23 Q Please.
24 A Okay. It says: Frank, this attached PowerPoint presentation
25 needs to be altered a bit during the meeting -- during the meeting you

1 and Vern had on Monday, please make the following corrections. And
2 then I pinpointed delete Zevelo [phonetic] graphics three year growth
3 chart update, agreements update, offering summary, delete the entire
4 parentheses referencing the escrow account in Provident, update
5 termination date, securities termination will be 18 months from the
6 executed promissory note unless extended by the company's board of
7 directors.

8 Q Okay. Where did you get -- were you doing this of your own
9 volition or did someone instruction you?

10 A I don't even know what half that means, so no.

11 Q So who instructed you to send this information to Frank and
12 Vern?

13 A If I was sending it to Frank and Vern it was one of -- it would
14 be either Ron or Mike, but Mike didn't really have anything to do with
15 this.

16 Q So Ron would have authorized you or directed you to send
17 this information to Frank to update the PowerPoint, right?

18 A Correct.

19 Q And to keep Vern in the loop?

20 A Correct.

21 Q Like for example, you the term securities, you wouldn't have
22 just unilaterally used that term, right?

23 A No.

24 Q Turn the page please to page 92.

25 A Okay.

1 Q September 5th, 2013, so it's the second email. You are writing
2 to Ms. Minuskin.

3 A Okay.

4 Q Subject: Promissory note. Julie, can you please send me a
5 copy of your promissory note in Word used for the initial 2 million
6 towards VCC, 2 m, fair to say that means 2 million?

7 A Yes.

8 Q Would you -- would it be a fair statement that by September of
9 2013 VCC -- Ms. Minuskin had raised 2 million dollars for VCC based on
10 the information in this email?

11 A Based on what my email says, yes.

12 Q Also what would you like altered on it? And Ron and Vern are
13 not sure how you would like it changed. I have attached a current
14 investor so you can reference the note I am speaking of. Who directed
15 you to send this email to Ms. Minuskin?

16 A Either Ron or Julie, because Julie liked things in writing and
17 she directed me to do things and so it was either Ron or Julie.

18 Q But Julie did not work for VCC or Wintech, right?

19 A She didn't, no.

20 Q She was an outside fundraiser?

21 A She was her own company. She was -- yes.

22 Q And so you're asking her for a copy of a promissory note in
23 Word that had previously been used because you wanted to change it a
24 little bit or someone --

25 A Someone did --

1 Q -- wanted to change it.

2 A Yes, correct.

3 Q And would that someone have been Ron?

4 A I honestly don't know, because Julie dictated a lot of that

5 promissory note.

6 Q Okay.

7 A She told me how to do things a lot.

8 Q Okay. But you didn't work for her, right?

9 A No.

10 Q And if she asked you --

11 A So I still cleared things, correct.

12 Q If she asked you to do something you would have to get

13 permission from Ron to do that, right?

14 A Yes.

15 Q Would it be fair to say that Ms. Minuskin for all of the investors

16 who purchased used a blank pre-signed promissory note to go out and

17 get investors?

18 A Oh, I think she did that with any company she's every worked

19 with, yes, I do.

20 Q That was -- right, --

21 A Correct. Not --

22 Q -- there was other companies as well --

23 A Absolutely, --

24 Q -- too for sure.

25 A -- not just VCC.

1 Q But as for VCC, it was agreed and understood that she would
2 have blank pre-signed promissory note that she would go out have the
3 investors complete, fill in the name of the investor, the amount and the
4 date, but everything else was the same?

5 A It was not initially to my understanding, we -- everything that
6 she had gone back and forth with editing that promissory note, it was
7 never supposed to be signed. She never -- like he never wanted it --
8 Ron Robinson never wanted it signed. She always said to me well this
9 is just -- makes it easier and this is what I've always done. And it just
10 like --

11 Q Uh-huh.

12 A -- makes life easier to do it this way.

13 Q So it was an accommodation for Ms. Minuskin to make it
14 easier for her to close the sale?

15 A Correct, her life was easier. She didn't have to deal with a
16 third-party getting signatures.

17 Q But ultimately you -- the company agreed to that arrangement,
18 right?

19 A I -- if they got the signatures then they must have agreed to it.
20 I -- that's beyond me. I emailed --

21 Q Turn to tab 5 please.

22 A Okay.

23 Q So this is an email. And I guess the information on the top
24 you can ignore that, that appears to be you sending to Mr. Rodriguez
25 after the lawsuit. But it -- the -- after this lawsuit has been filed for your

1 counsel to produce. So in the middle of the page there's an email from
2 Alisa Q.

3 A Uh-huh.

4 Q Which is you, to Julie, and the date is September 17th, 2013.
5 And it says: Please see the attached doc X with Ron's two signatures.
6 It does not have his initials on each page. So it does not have his initials
7 on each page, but it did have the signatures, right?

8 A Well as far as I'm reading, yes.

9 Q But this is you writing it to her.

10 A Correct.

11 Q You weren't just making this up, right?

12 A No, but unless I'm staring at it like I don't -- yeah.

13 Q Okay. So on September 17th, you had sent her a file, a
14 promissory note with Mr. Robinson's two signatures. But it didn't have
15 his initials on each page as we would prefer he does each of those after
16 the investor info is created, right?

17 A Correct.

18 Q And that was the position of the company on September 17th,
19 of 2013, right?

20 A Yes.

21 Q And then if we turn to page 80, a few pages in, the same
22 exhibit.

23 A Okay, the handwritten, yeah.

24 Q Yes, yeah I wrote --

25 A Okay.

1 Q -- that's because the other one and we have the original, but
2 yeah, I -- this is a cleaner copy. You writing to Ms. Davis the next day:
3 For the sake of us not having to deal with different scheduled attached is
4 the new doc X promissory note for VCC with the initials and signatures.
5 You see that?

6 A Correct.

7 Q And at your -- at the *Waldo* trial I asked you about that and
8 you said -- I'm just kind of paraphrasing --

9 A Uh-huh.

10 Q -- is that you didn't have the original docket on the 17th didn't
11 have his initials. But sometime between the 17th and the 18th you sent it
12 to Ron and he initialed it, sent it back to you and authorized you to send
13 it to Ms. Minuskin?

14 A Correct.

15 Q Is that what happened?

16 A Well I do -- I do know -- I don't remember the exact
17 conversation, but I remember Julie talking to me on the phone and very
18 clear about how she was not happy with it not being blank signature. So
19 I'm assuming if she had that conversation with me, she's having that
20 exact same conversation with Ron. And you can even say -- you can
21 even go back to your reference of 76 where it -- where she's asking me,
22 can we send -- can you send me one that -- that he has signed so we
23 aren't having to sign them one at a time. So even the conversation she
24 had with me on the phone to get everything blank signed, she also
25 asked there. So it was definitely her pressure -- I don't know. That's just

1 how she did business.

2 Q Right, but that's not what I asked you.

3 A I apologize.

4 Q So sometime between the 17th and the 18th, you sent this
5 promissory note to Ron without his --

6 A Correct.

7 Q -- initials. He initialed it, sent it to you and then you sent it to
8 Ms. Minuskin?

9 A Yes, if that's what I was told to do that's exactly what I did.

10 Q But you did not -- for example, during Mr. Robinson's
11 deposition in *Waldo* I said, I asked him, and is it your position that both
12 of these signatures were provided to Ms. Minuskin without your
13 permission on the promissory note?

14 Answer: I didn't give any permission of anything.

15 Question: Do you know why Ms. Davis was providing this to
16 Ms. Minuskin in September of 2013.

17 Answer: I have no idea.

18 Question: She was clearly doing it sir without your
19 permission, is that correct?

20 Answer: Yes, I was unaware of it totally.

21 That's not true, right?

22 A No, and I've learned that after 35 years with this man that his
23 brain just is fried half the time. That he has too much going on and he
24 doesn't remember anything.

25 Q Okay, so -

1 A So, no.

2 Q So just so we're clear, sometime between the 17th and the 18th
3 you sent Ms. Minuskin the pre-signed --

4 A Initialed.

5 Q -- with the two signatures and then he initialed it. Sent it back
6 to you on the 18th and then you sent it off to Ms. Minuskin?

7 A Yes.

8 Q Thank you. Tab 7, Ms. Davis.

9 A Okay.

10 Q Page 84.

11 A Okay.

12 Q This is an email that you sent to Ms. Minuskin, copied Mr.
13 Robinson and Mr. Rodriguez and Julie please review this with Josh and
14 let us know when is the potential investor can speak with Vernon on the
15 phone. Was that something that Mr. Rodriguez would do from time to
16 time so speak with investors on the phone?

17 A If Julie and Josh had an investor that was still wary of the
18 investment because they were just reading paper and they wanted to
19 know more about that company, then yes Vern would be the one that
20 would have the conversations. And then I was under the impression that
21 after Vern, Frank would get into all the techy stuff.

22 Q Okay. Ms. Davis, thank you very much.

23 A You're welcome.

24 THE COURT: Cross-examination.

25 **CROSS-EXAMINATION**

1 BY MR. GEWERTER:

2 Q Alisa, how are you?

3 A Good, how are you?

4 Q Did you ever see your grandfather, Ron Robinson, ever sell
5 any of these notes to any investors?

6 A Sell any of --

7 Q Yeah, did he ever talk to investors face to face?

8 A No.

9 Q -- to have them invest in VCC?

10 A No.

11 Q Did you ever see Vern Rodriguez ever talk face to face with
12 investors?

13 A No.

14 Q What was Frank Yoder's position with VCC and Wintech? I
15 know it changed a little bit, but tell me the best you can.

16 A I know that Frank and Mike were the ones that created the
17 technology. And they were the brothers and as far I know they were the
18 techy people. And they weren't very business oriented, which is why
19 they had asked Ron and Vern to come in to help with the business side
20 of things. But I don't what Frank -- I don't know what anyone really did
21 to be honest.

22 Q Okay. That's fair.

23 A Okay.

24 Q That's fine. That's a fair --

25 A They were there doing things.

1 MR. GEWERTER: No, further questions. Thank you.

2 MR. LIEBRADER: Nothing else, Your Honor. We'd like to

3 dismiss Ms. Davis from the lawsuit at this point.

4 MR. GEWERTER: And that's with prejudice?

5 MR. LIEBRADER: With prejudice, yes.

6 THE COURT: All right.

7 MR. GEWERTER: So she's got -- she has little kids to take of

8 if I can have her leave the courtroom.

9 THE COURT: Yes, all right. So upon motion of the plaintiff

10 and there being no objection thereto, you will be dismissed with

11 prejudice from this lawsuit. And I'm assuming we can also release her

12 as a witness, is that correct?

13 MR. GEWERTER: Correct.

14 MR. LIEBRADER: Yes, Your Honor.

15 THE COURT: All right. Thank you very much. You may step

16 down.

17 THE WITNESS: Thank you.

18 MR. GEWERTER: Go do your homework with the kids now.

19 MS DAVIS: It's too late.

20 MR. LIEBRADER: Your Honor, at this point I'd like to move

21 that Exhibit 6 be entered into evidence.

22 MR. GEWERTER: One second.

23 MR. LIEBRADER: I covered that with Ms. Davis.

24 MR. GEWERTER: Hold on. That's fine.

25 MR. LIEBRADER: Exhibit 10.

1 MR. GEWERTER: One second. That's fine.
2 MR. LIEBRADER: And how about 2, do we -- is 2 in already?
3 MR. GEWERTER: I have it checked that we did.
4 THE COURT: Yeah, I have it in too.
5 MR. LIEBRADER: Yes, two. Okay.
6 THE COURT: So I'm -- I'll be candid, this is fine. This is
7 maybe too much of an issue. But generally the exhibits are moved in
8 and then the witness testifies to them. We're doing it completely
9 opposite here. The witnesses are testifying them and then we're moving
10 them into evidence. But it doesn't seem to be an issue.
11 MR. GEWERTER: I agree. Normally it would be an issue, but
12 we've stipulated to most of these.
13 THE COURT: Yeah, okay.
14 MR. GEWERTER: It's our second go around.
15 THE COURT: And I just wanted to make sure that we're all on
16 the same page here. Okay. If I was missing something I wanted to be
17 sure about that. So at this point the only one that's really -- or the two
18 that outstanding -- let's see here.
19 **[EXHIBITS 6 AND 10 -- ADMITTED]**
20 MR. GEWERTER: Are 8 and 9.
21 THE COURT: 8 and 9, right.
22 THE CLERK: And then 15.
23 MR. GEWERTER: Correct.
24 THE CLERK: And then --
25 MR. LIEBRADER: No, 8 isn't -- oh right, 8 because, right we

1 need to --

2 THE COURT: Right, 8, 9, and then 15, if they're going to
3 admit anymore that will have to be discussed.

4 MR. GEWERTER: We have two pages of number 15
5 admitted.

6 THE COURT: Okay. All right, who is our next witness?

7 MR. LIEBRADER: Mr. Rodriguez.

8 THE COURT: All right.

9 MR. LIEBRADER: Do you want to start with him tonight or --

10 THE COURT: Yeah, we can start with him. How many more
11 witnesses do we have?

12 MR. LIEBRADER: Just Mr. Yoder. Yeah, we could start with
13 Mr. Rodriguez if you'd like, if Your Honor wants to go.

14 THE COURT: Yeah, why don't we get started and see how
15 far along we get. Maybe we'll finish a few minutes early and pick up
16 tomorrow if we need to.

17 MR. GEWERTER: Great, thank you.

18 MR. LIEBRADER: Okay.

19 THE COURT: All right.

20 **VERNON RODRIGUEZ**

21 [having been called as a witness and being first duly sworn, testified as
22 follows:]

23 THE CLERK: Please be seated.

24 THE WITNESS: Thank you.

25 THE CLERK: And then state and spell your name for the

1 record.

2 THE WITNESS: My name is Vernon, V-E-R-N-O-N,
3 Rodriguez, R-O-D-R-I-G-U-E-Z.

4 **DIRECT EXAMINATION**

5 BY MR. LIEBRADER:

6 Q Good afternoon, Mr. Rodriguez.

7 A I might have to borrow his glasses if you want to refer to --

8 Q Oh sure, I will be -- do you have an extra pair or --

9 MS. DAVIS: He can use his -- he needs your glasses.

10 MR. ROBINSON: Oh.

11 MR. GEWERTER: Give them to the Bailiff.

12 MS. DAVIS: The Bailiff's got them.

13 MR. ROBINSON: Thank you.

14 THE COURT: May I just remind you to speak into that
15 microphone so that we capture everything you're saying, okay?

16 THE WITNESS: Okay.

17 THE COURT: Thank you.

18 THE WITNESS: Thank you.

19 BY MR. LIEBRADER:

20 Q Mr. Rodriguez, can you please turn to tab 8 please?

21 A Okay.

22 Q And to you recognize this document?

23 A I do.

24 Q And what is it?

25 A It looks like a list of our -- of the shareholders in the company.

1 Q The promissory noteholders, right?

2 A Correct.

3 Q And this was prepared by VCC to keep track of the amounts

4 the investors invested In the company and when their notes matured?

5 A No, that's not correct. I believe that this was prepared by

6 Provident Trust.

7 Q Okay. But you've seen it before?

8 A As part of the Chapter 11, we were required to produce this

9 document for the Federal Court.

10 Q Okay. So you think it came from Provident Trust or you think

11 that VCC --

12 A I believe that's --

13 Q -- created it?

14 A -- that's who had all this information.

15 Q Okay. All right, let me ask you a different question. Whose

16 job was it to keep track of the investors that came into the company?

17 A I believe that as the each noteholder funded through Provident

18 apparently Alisa probably kept a list of who -- the name of the person

19 and the amount.

20 Q And you paid monthly VCC paid monthly interest, right?

21 A That's correct.

22 Q Who calculated how that -- the specific amounts that these

23 investors were due and how it got to them?

24 A My understand was that Julie Minuksin, at the time the

25 transaction was completed, produced the amount and how much they

1 would get at 9% interest.

2 Q Well who wrote the checks every month to Provident Trust,
3 who oversaw that?

4 A No, I didn't oversee. It was done at the VCC corporate level.
5 Ron and Alisa produced those. The funding came from Provident into
6 the company and the interest checks went out from VCC to the -- to
7 Provident at the time.

8 Q So Ron and Alisa were responsible for making sure that
9 investors got their 9% every month?

10 A That's correct, and Julie Minuskin was also involved to make
11 sure that that occurred.

12 Q But she didn't work for VCC?

13 A No.

14 Q So Ron and Alisa were -- had control of the finances of the
15 company?

16 A To my knowledge money came into the VCC and money --
17 interest payments went out from VCC, so that's the way it occurred.

18 Q Who authorized the money to go out, was it you or Mr.
19 Robinson?

20 A To who?

21 Q To pay the investors.

22 A That came from apparently Ron.

23 Q From Ron. Can you turn to tab 13 please? This was a private
24 placement memorandum prepared in February of 2016, is that right?

25 A I was aware of it. I don't remember the date.

1 Q Okay. And did you have any input in providing the information
2 to the company that put this together?

3 A I'm sure, I reviewed the document. But I did not put it
4 together. I was aware of the fact that we were attempting to raise capital
5 through this document.

6 Q Can you turn to tab 14 please? This was a preliminary
7 offering circular, dated August 17th at 2015. So that was separate from
8 what we saw in tab 13, right, which was a private placement
9 memorandum?

10 A I have to assume you're correct. You know, there were a few
11 attempts to raise capital through different methods and again I probably
12 was able to see the document. But I don't recall the order that they were
13 done in or --

14 Q Can you turn quickly to tab 11, page 150. And again, the
15 page number is on the top right of each page.

16 A Okay. What page?

17 Q Tab 11, page 150.

18 A 150, okay.

19 Q And this is a document, the initial or the annual list of officers
20 filed with the Secretary of State for the period January 2015 to January
21 2016. And you were listed as treasurer for the company, is that right?

22 A Apparently so.

23 Q And what was your job as the treasure for Virtual
24 Communications Corporation?

25 A Well these -- the corporation, there were four of us that were

1 directors of VCC. My responsibility was at the Wintech level and there
2 we did give ourselves titles. Frank was president. I was listed as CEO.
3 Mike Yoder was the CTO. There was no day to day operation in Virtual
4 Communications Corp, so I didn't really function as a day to day
5 operator there.

6 Q So but VCC existed, I think Mr. Robinson testified to, just to
7 kind of raise money on behalf of Wintech, even though Wintech was a
8 wholly own subsidiary, right? There was VCC and then Wintech had the
9 technology inside, right?

10 A Wintech actually existed before VCC. It was formed prior to
11 VCC. And it's correct that VCC was formed really for two reasons. One,
12 when Retire Happy decided to raise money for the company. That was
13 one reason VCC was formed, but also for the reason of a future potential
14 going public or an acquisition.

15 Q Okay. And you were listed as the Chief Financial Officer for
16 VCC and not just one -- not just the private placement memorandum in
17 tab 13, but also the preliminary offering circular in tab 14?

18 A What were the dates of those, counselor?

19 Q That would be August 2015 for the preliminary offering
20 circular, that's tab 14. And tab 13 is February 22nd of 2016.

21 A That's correct, I actually became -- was listed with the state of
22 Nevada as a CFO in the summer of 2014. I was not listed as that prior
23 to that.

24 Q Well it says here you're disclosing to future potential investors
25 or VCC is that you were the company's chief financial officer and you

1 have held this position since 2012, is in charge of financial policy and
2 financial records of the company.

3 A Where is that -- who -- I mean, how do you arrive at that?

4 Q Well that's tab -- that's tab 14 and also tab 13. And I think you
5 said as to -- at least as to tab 13, the private placement memorandum,
6 that you were sure that you reviewed the document.

7 A Well I think all four of us would review documents when they
8 were sent to us. But my recollection it wasn't until 2014, mid-summer
9 was I actually listed in the state of Nevada as a CFO. Prior to that, I was
10 functioning as CEO for Wintech, the operating company.

11 Q Can you turn to tab 2 please, Mr. Rodriguez?

12 A Sure.

13 Q We talk about this -- Mr. Robinson testified to this. I think, yes,
14 just Mr. Robinson. The first page, page 41 is the first page of Exhibit 2.

15 A Yes.

16 Q We are in complete agreement with your -- and you're
17 generally familiar. Take a look and let me know --

18 A Uh-huh.

19 Q -- if you're familiar with this. You've seen this before, right,
20 this email? The \$17 million net worth email.

21 A I don't recall the exact document. But I most likely saw it.

22 Q Okay. Well take a look at it.

23 A All right.

24 Q I want you to --

25 A Okay.

1 Q -- answer some questions if you could.

2 A Okay.

3 Q So this is Mr. Robinson writing to Ms. Minuskin December of
4 2012, just when kind of the offering just got started.

5 A Uh-huh.

6 Q We are in complete agreement with our communication with
7 your investors. Vern will be the direct contact. Do you disagree with
8 that Mr. Robinson expected you to be the direct contact with the
9 investors?

10 A The answer is not just yes or no. The answer there is yes that
11 was told to Julie Minuskin, which by the way she said I don't want
12 anybody talking to my investors unless they have --

13 MR. LIEBRADER: Objection, hearsay.

14 MR. GEWERTER: No, it's not she's a party.

15 MR. LIEBRADER: She's not a party.

16 MR. GEWERTER: She's not a party?

17 THE COURT: Well --

18 THE WITNESS: I was not allowed to talk to investors. Unless
19 --

20 THE COURT: All right. So hold on. That objection is
21 overruled as it goes to the effect on the listener as to what I think -- I
22 don't know what he's going to say. And it was --

23 MR. GEWERTER: Well she's the owner --

24 MR. LIEBRADER: I'll withdraw --

25 THE COURT: -- I'll allow him to answer. Hold on.

1 MR. GEWERTER: She's the owner of the --

2 THE COURT: I'm going to overrule that objection. So I want
3 to hear the answer before I can actually evaluate what's being said.

4 THE WITNESS: Okay.

5 THE COURT: So what did she tell you?

6 THE WITNESS: When the original agreement was done, she
7 made certain to inform, not just me, Mr. Robinson, and the Yoder
8 brothers, that we were not to talk to any potential noteholders or people
9 that were loaning money to the company. However, she did say if we
10 run into a problem with an investor or a -- somebody that wants to loan
11 money to the company and they have a questions about ALICE, the
12 company, whatever, Mr. Robinson said, you know, Vern is the guy to
13 talk to them about the overall company. And the Yoder brothers will talk
14 to them about technology. To my knowledge, we never had even one of
15 those people call us during the whole time that the lending was being
16 done.

17 THE COURT: All right. How do you know that she told that to
18 Ron and the Yoder brothers?

19 THE WITNESS: I was in the room when Julie Minuskin and
20 her partner Ben Williams said that to Rob at the very beginning, before
21 any money was loaned at all. I insist that you do not talk to my -- they're
22 my people, my contacts, I don't want you talking to anybody. So that
23 was my understanding and I didn't find any problem with that.

24 THE COURT: All right.

25 MR. LIEBRADER: But if they did have questions they -- Rob

1 was hereby authorizing them to speak to you?

2 THE WITNESS: Yes, but nobody ever did.

3 THE COURT: Are you renewing your hearsay objection or are
4 you going to let that stand?

5 MR. LIEBRADER: I think Your Honor wanted to hear the
6 answer and so I'm -- I withdraw my objection.

7 THE COURT: Okay. All right, fair enough, thank you.

8 BY MR. LIEBRADER:

9 Q Mr. Rodriguez, tab 2, page 48. What was the purpose -- oh
10 I'm sorry, I'll let you get there.

11 A 48, okay.

12 Q What was the purpose of you -- what was the purpose of this
13 document or this agreement? Excuse me.

14 A Apparently this was the agreement -- let's see here. I guess
15 this was the board of director's agreement internally.

16 Q Was this part of the fund raise and Mr. Robinson's guarantee,
17 correct?

18 A I can't recall the purpose of it.

19 Q Well it says in the middle paragraph, RJ Robison will be
20 responsible for payment to the investors. So clearly this is --

21 A Okay.

22 Q -- pursuant to the fund raise, right?

23 A Sure, yes.

24 Q Utilizing his financial statement and credit rating to persuade
25 the investors to make this investment.

1 A Yes, that's fair.

2 Q Isn't it true the Mr. Robinson intended to guarantee these
3 transactions and he was going to be paid back pursuant to this
4 agreement with some kind of shares from VCC for doing so?

5 A That is my understanding.

6 Q And you signed off as the director of Virtual Communications
7 Corporation right?

8 A That's correct.

9 Q And at that time you were the CEO of Wintech, but you were
10 also a director of Virtual Communications, right?

11 A That is correct.

12 Q Turn to tab 4 please, Mr. Rodriguez. We kind of covered
13 these -- this a little bit. But this is the PowerPoint.

14 A Uh-huh.

15 Q And Mr. Yoder was responsible for putting together the
16 PowerPoint, right?

17 A That's correct.

18 Q Because he had a tech background to do it?

19 A That's correct.

20 Q Right.

21 A And he was -- he could do a PowerPoint presentation and was
22 president of and knew the day to day, so yes.

23 Q So he knew the day to day stuff. So he put it together. But it
24 looks like he was asking for instructions and Mr. Robinson was directing
25 the information that would be included in the PowerPoint, is that right?

1 A I was not involved in the PowerPoint presentation other than
2 when it was not totally completed, but I would be CC'd on looking at it as
3 well as Mike Yoder was. We all had a chance to look at it but --

4 Q And you knew that PowerPoint presentation was being used
5 by Ms. Minuskin to present to investors to kind of entice them or give
6 them information about the company to help them invest?

7 A They -- yes, they wanted a presentation so that they -- their
8 sales people could convince people to loan --

9 Q I mean, that was the purpose of the PowerPoint presentation
10 to basically give the investors information that they could rely on in make
11 -- deciding to make an investment?

12 A Yeah, like all investments it was information about what
13 people were going to loan -- why people would want to loan money.

14 Q And were you copied on all of these emails, correct?

15 A I don't know that I was copied on all of them, but I was --

16 Q Well the ones --

17 A -- for example, on this one I was.

18 Q Yeah, in tab 4. I don't know -- all meaning in tab 4.

19 A Yeah.

20 Q Would the updates and the information and the changes that
21 were being made, you were kept in the loop on all of that, right?

22 A I believe so.

23 Q Tab 7, sir. This is an email Ms. Davis testified to about the
24 fund raise in September of 2014 which is now about 19 months into the
25 fund raise, right, because it started in January of 2013?

1 A Okay.

2 Q And September of 2014 Ms. Davis writes to Mr. -- to Ms.
3 Minuskin, and you're copied and Mr. Robinson is copied. Please review
4 this with Josh and let us know when his potential investor can speak with
5 Vernon on the phone. Were you aware that Ms. Davis was telling Ms.
6 Minuskin that she could have investors contact you if they had any
7 questions on the offering?

8 A I had to -- again, it's tough to remember these specific. But I
9 would have to assume that Mr. Robinson told Alisa that if anybody had a
10 question to refer them to me.

11 Q And Ms. Davis just testified Vern would speak with investors
12 wary of the company. Do you recall that?

13 A I -- as I --

14 Q Maybe wary was the wrong word, but if they had questions
15 about the company or the investment, you would speak to them?

16 A As I mentioned before, I never spoke with one investor -- not
17 one was referred to me that I can recall. I expected some calls, but
18 never -- not one ever came in.

19 Q So you -- but so you were standing by ready to offer that
20 assistance if it was needed?

21 A Unless it was a question about the technical aspects of our
22 software. Because I'm -- I was not a - still a dinosaur in technology.
23 And so Frank and Mike were the key people in -- and if there were any
24 questions, we anticipated that's what they would be.

25 Q So the technical aspects would go to the Yoders and what

1 would you fill them in on, the offering terms, going public, the financing?

2 A They were pretty much in the loop on thoughts about what we
3 would do in the future or what we could do. Yes, they were aware of --

4 Q Going public?

5 A We had talked about a potential going public, yes. That was
6 our exit strategy, if you will, on the borrowing money.

7 Q I'm sorry, Mr. Rodriguez, just please bear with me one
8 second. Sir, thank you. I have no more questions.

9 THE COURT: All right. Cross-examination. Well let me ask
10 you this, how long do you think your cross is going to for?

11 MR. GEWERTER: Very quick.

12 THE COURT: Okay. Let's go ahead and get --

13 MR. GEWERTER: I was just looking at the clock also.

14 **CROSS-EXAMINATION**

15 BY MR. GEWERTER:

16 Q Mr. Rodriguez, how are you today?

17 A Good.

18 Q Would you please look at Exhibit 8?

19 A 8?

20 Q Yes.

21 A Okay.

22 Q Did you prepare that document?

23 A I did not.

24 Q Did you ever prepare any similar documents like this on behalf
25 of VCC or Wintech?

1 A I did not.

2 Q Do you know who prepared this document?

3 A Again I believe it came from Provident Trust.

4 Q What was Provident Trust's role in this money raising
5 intention?

6 A A representative of Provident Trust approached Frank Yoder
7 and myself at a networking meeting one day and said that they had --
8 they were aware that we were trying to raise some funds, through
9 conversation, and said I know a company that we work with very closely
10 that may be able to raise some fund for you. And he says I will have
11 them get in touch with you.

12 Q And who was that company?

13 A That Provident Trust the rep that -- oh and it was Retire Happy
14 that he introduced us to.

15 Q And when you first met this representative from Provident
16 Trust, did you understand that they were a licensed trust company in the
17 state of Nevada?

18 A Again I was aware of self-directed trust companies that handle
19 self-directed funds and IRAs, and I assumed that they were a similar
20 company and --

21 Q Did you believe they could handle self-directed IRA accounts?

22 A Yes, I -- the answer is yes.

23 Q And is that what happened? They acted as a trustee for the
24 self-directed IRAs?

25 A That was my understanding.

1 Q Okay. Did you ever authorize payments to investors on a
2 return of their investments?

3 A No.

4 Q So you were not involved in any accounting, correct?

5 A No.

6 Q Let me clarify, were you ever involved in accounting to raise
7 the money?

8 A No.

9 Q Were you ever involved in accounting to pay back payments
10 of the money?

11 A No.

12 Q In fact, you're what I would call marketing guy, is that correct?

13 A I was involved with the operating company full time.

14 Q Okay. And --

15 A Which is Wintech.

16 Q You weren't soliciting funds were you?

17 A No.

18 Q And to the best of your knowledge did you ever violate any
19 securities laws in the state of Nevada?

20 A I don't even know what securities laws are in Nevada, no I
21 didn't.

22 Q And did you ever act outside of your capacity as an officer or
23 director of any of the two companies referred to today?

24 A I believe so.

25 Q Outside the capacity? Did you act in accordance with what

1 you believed an officer and director should do --

2 A Yes.

3 Q -- for a Nevada corporation?

4 A Yes.

5 Q Okay. And did the company have minutes, both companies?

6 A Um --

7 Q Let's go - no wait. Did Virtual Communications have corporate

8 minutes?

9 A Yes. They did.

10 Q Did they hold corporate meetings?

11 A Yes.

12 Q Do they have separate bank accounts?

13 A Yes.

14 Q Did Wintech have minutes?

15 A I don't believe so.

16 Q Did they hold annual meetings?

17 A We did have member meetings.

18 Q Okay.

19 A It's possible. I'm not totally or remember that. But --

20 Q So you weren't as involved with Wintech, is that correct?

21 A I was involved with Wintech.

22 Q Okay. But did you -- were in charge. Who was in charge of

23 operating or conducting minutes, I'm sorry meetings for Wintech?

24 A Generally -- I can't tell you who -- nobody was in charge of it.

25 Occasionally if it was -- for example, on the agreement to borrow funds

1 from Virtual Communications --

2 Q Right.

3 A -- we as the foursome members of LCC met to agree to form
4 VCC.

5 Q And did they keep current with the Secretary of State every
6 year?

7 A Yes.

8 Q And that's true for both companies as far as you know?

9 A Yes.

10 Q Did you ever make any representations in writing to any
11 investors before they invested in VCC promissory notes?

12 A No, I didn't.

13 Q Did you ever make any representations subsequent to
14 investment in VCC?

15 A No.

16 Q Did you ever talk to anyone verbally or otherwise, by carrier
17 pigeon or any means, before somebody invested in VCC promissory
18 notes?

19 A No.

20 Q So you never -- so you never made any representations,
21 therefore you couldn't make any misrepresentations, is that correct?

22 A That's correct.

23 Q You talked earlier that Julie Minuskin wanted investors to go
24 through her only? I'm talking about the investors.

25 A Yes.

1 Q Tell me exactly what you mean when you talk about for
2 investment purposes, correct?

3 A She -- that --

4 Q Tell me -- if you can elaborate on that.

5 A That for sure, but even she did not -- she wanted to protect
6 her -- what she said her list of contacts and customers because she had
7 other investments she was placing them in. And I guess wanting to
8 protect somebody going -- trying to go around her or something. So no,
9 she did not want us contacting them unless she directed us to.

10 Q And you never did talk to any of the investors did you?

11 A Not prior to them investing.

12 Q At any time whatsoever, including today.

13 A When went into default some investors did call and that's
14 when I began -- that's when I did talk to some.

15 Q That was after all the money was invested, correct?

16 A That's right. Now there may have been -- there may have
17 been -- I don't recall talking to investors while we were raising funds at
18 all. I mean, again and I just assumed that Julie did not want me talking
19 to anybody --

20 Q Well, -

21 A -- or Frank or Mike.

22 Q -- I haven't seen any emails that show that so far. I've not
23 seen any emails that you made representations to investors.

24 A No.

25 Q Are there any out there that you might be aware that I am not

1 aware of?

2 A I'm not aware of any.

3 Q And it is true that Frank Yoder, who's actually a named
4 defendant in this case, was responsible for the PowerPoint
5 presentation?

6 A Yes, he was.

7 Q What was your involvement with the PowerPoint presentation
8 if any?

9 A I reviewed -- I looked at the document. I know when it was
10 completed and perhaps even before. I did get to see the document. I
11 was CC'd on the information as was Mike Yoder and Ron Robinson.

12 Q But it was Frank that was really put together the game plan for
13 the PowerPoint presentation?

14 A Yeah, he was -- yes.

15 Q And that was to raise money, is that correct?

16 A That was required by Retire Happy in order for them to make
17 presentations to raise --

18 Q So is it --

19 A -- money.

20 Q I'm sorry. Is it a fair statement that Julie Minuskin gave
21 directions to Frank Yoder to do a PowerPoint presentation which he did
22 and then it went back to Julie to do a presentation to investors?

23 A That's basically how it happened, yes.

24 Q Were you ever present at any presentation to solicit funds?

25 A No.

1 Q Do you know if Ron Robinson was ever present in any
2 PowerPoint presentations to solicit funds?

3 A I know that he wasn't nor were the Yoder brothers.

4 Q Did any government entity ever tell you that you were acting
5 outside of your capacity as an officer director for these two companies?

6 A No.

7 Q Did any lawyer ever tell you, you were acting outside your
8 capacity?

9 A No.

10 Q In fact in -- when Liebrader sent demand letters to the -- to
11 Virtual Communications Company that was for payment of the notes. It
12 wasn't claiming that you did anything wrong securities-wise was it?

13 A Not to my knowledge.

14 Q Okay. I have nothing further. Thank you.

15 THE COURT: Redirect Examination.

16 MR. LIEBRADER: Nothing, Your Honor. Thank you.

17 THE COURT: All right. Thank you very much you may step
18 down.

19 THE WITNESS: Thank you.

20 THE COURT: All right. I think this is a natural breaking point
21 and so we will be in recess until tomorrow. Actually --

22 MR. GEWERTER: Can we leave our documents in the
23 courtroom?

24 THE COURT: I'm sorry?

25 MR. GEWERTER: I said do you have a crowded court in the

1 morning, could we leave our --

2 THE COURT: I have somewhat crowded court, but if you if you
3 organize it should be fine. So if you want to leave some stuff here, I'm
4 okay with that. I don't have a problem with that.

5 MR. GEWERTER: Like under the table or --

6 THE COURT: Perhaps you want to put it on the chairs behind
7 you.

8 MR. GEWERTER: Oh put them under the chairs there?
9 Okay.

10 THE COURT: Yeah.

11 MR. GEWERTER: That's fine.

12 THE COURT: That work?

13 THE RECORDER: Either that or in the room.

14 THE COURT: Or in the -- oh yeah, there's a room back there
15 too so you don't have to --

16 MR. GEWERTER: Oh, that's even better.

17 THE COURT: Yeah, you don't have to tramp it in and out.
18 There were go.

19 MR. GEWERTER: Thank you very much.

20 THE COURT: That's no problem. So we'll be in recess. I
21 actually think we -- if we just have one witness left, let me ask the
22 parties. Do you want to start in the morning or do you want to --

23 MR. GEWERTER: Yeah, can we start in the morning.

24 THE COURT: -- start in the afternoon?

25 MR. GEWERTER: I'm not sure how long this witness is. It

1 was -- let just say he was very combative at the last trial, but we'll try and
2 keep it short.

3 THE COURT: Okay. So let's start -- I'm going to give my staff
4 a little bit of a break, because we've been going at it. So we're going to
5 start at 11 instead of 10:30.

6 MR. LIEBRADER: 11.

7 MR. GEWERTER: And as for closing, if Your Honor is going
8 to require post-trial briefs, can we do the briefs in lieu of closing?

9 THE COURT: I think that would be helpful to the Court.

10 MR. GEWERTER: Yeah, because closing you're going to
11 hear the same thing you just heard.

12 THE COURT: Exactly. So we'll

13 MR. GEWERTER: I prefer the briefs, Your Honor.

14 THE COURT: As would I. So that's it. Anything else we need
15 to address before we recess for the evening?

16 MR. GEWERTER: No. Thank you very much for your time.

17 MR. LIEBRADER: 11 a.m.?

18 MR. GEWERTER: And your staff also.

19 THE COURT: 11 a.m.

20 MR. GEWERTER: Thank you.

21 MR. LIEBRADER: Okay, sounds good. And no closing then?

22 THE COURT: No need for closing.

23 MR. GEWERTER: No, we're going to do briefs.

24 MR. LIEBRADER: Okay.

25 THE COURT: I might have some questions for you that I

1 might direct you to answer in your briefs --

2 MR. LIEBRADER: Okay.

3 THE COURT: -- but otherwise.

4 MR. LIEBRADER: Sounds fine.

5 MR. GEWERTER: Your Honor, the other question -- there's
6 Mr. Rodriguez has a medical issue with his wife in the afternoon. Can
7 we excuse his participation?

8 THE COURT: Of course. That's no problem.

9 MR. GEWERTER: So Mr. Robinson will be here of course,
10 right?

11 MR. ROBINSON: Do I have to be?

12 MS. DAVIS: Yes, you have to be.

13 MR. GEWERTER: You don't want to stand next to me after all
14 this time?

15 [Trial day 1 concluded at 4:40 p.m.]

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20 **ATTEST:** I do hereby certify that I have truly and correctly transcribed the
21 audio/video proceedings in the above-entitled case to the best of my ability.

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Jessica Kirkpatrick
Court Recorder/Transcriber